

ALEXANDER M. CUMMING.

DECEMBER 7, 1858.—Reported from the Court of Claims, and committed to a Committee of the Whole House to-morrow.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled :

The Court of Claims respectfully presents the following documents as the report in the case of

ALEXANDER M. CUMMING *vs.* THE UNITED STATES.

1. The petition of the claimant.
2. Documents from the Post Office Department numbered from 1 to 13, exhibited as evidence in the case transmitted to the House of Representatives.
3. Depositions offered by the claimant, and numbered 1, 2, and 3, transmitted to House of Representatives.
4. Brief of claimant's counsel.
5. Brief of United States solicitor.
6. Opinion of the Court adverse to the claim.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at Washington, this 7th day of December,
[L. S.] A. D. 1858.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

To the Court of Claims of the United States :

The petition of Alexander M. Cumming, of Princeton, Mercer county, New Jersey, respectfully represents that in the year 1836 he was a contractor for carrying the mails from New York to Philadelphia, in post coaches, on route No. 951, and carried such mail twenty-three days in the month of December of that year, the value of which service, according to the contract price, was \$700. Payment for the above service was demanded of and refused by the Postmaster General, on the ground that your petitioner's contract was annulled on the 8th of December, 1836; while your petitioner insists that it was not annulled until new schedules were furnished, and until

a new arrangement of the mails, which went into operation on the first day of January, 1837; and if his contract was annulled on the 8th of December, 1836, the direction of the Postmaster General, for your petitioner to "continue carrying the mails on 951 and 952 until otherwise ordered," operated as a new, or enlargement of the old contract, and authorized your petitioner to perform the service above mentioned, which he did in good faith, and for the public interests.

Your petitioner further represents that in the year 1836, he expended the sum of \$827 71, for forwarding the United States mails on route No. 951, during an unusually inclement season. That for several days, owing to the severity of the storm, the mails from the south did not arrive in Philadelphia, and the like delay of mails from the east existed at New York, which devolved on your petitioner such an extraordinary quantity of mails, as made it wholly impracticable for him to transport them by his teams, which were ample for his regular mails. That he performed the above service, and incurred the above expenses at the request of Colonel Page, postmaster of Philadelphia, and in obedience to the requirements of George Plitt, agent of the Post Office Department, whose directions were approved by the Postmaster General, as were the exertions of your petitioner, who received the strongest assurances of payment for his extraordinary expenses.

Your petitioner also represents that he made proposals for carrying the United States mails on routes No. 951 and 952, from Philadelphia to New York, for four years, with a deduction from each in case both were accepted. That both were accepted for four years, and one contract was annulled against his consent, at the end of one year; in consequence of which, he insists that he is entitled to receive the maximum payment in the contract which was continued and performed by him for the whole period.

Your petitioner also insists that, under his contract, he was entitled to carry the United States mail on the routes above mentioned until Congress authorized the carrying of the mails on railroads, in the month of July, 1838.

That in consequence of the annulling of his contract by the Postmaster General, your petitioner has sustained damage to the amount of \$15,750. An estimate of his damages, and proof thereof, will be made and furnished to the court before the final hearing on his petition.

Your petitioner further sheweth that his claims were presented at the General Post Office for adjustment, and disallowed by the Postmaster General and the Auditor of that office, as will appear by their decisions and the report of the said Auditor, dated February 19, 1842; and also by the First Comptroller of the Treasury, on an appeal to him from the decision of the auditor.

His claim was then presented to Congress, during the same year, and an adverse report made thereon, in the Senate, on the 5th of April, 1842.—(See Senate Doc. No. 219, 2d Sess. 27th Congress.) A favorable report was subsequently made upon a portion of his claim, in the House of Representatives, January 30, 1846.—(See House of Representatives Doc. 169, 1st Sess. 29th Congress.)

A joint resolution, predicated on said report, was subsequently passed; but it afforded your petitioner no relief, the word "equitably" in said resolution having been stricken out, and an unfavorable report made by the auditor of the Post Office Department. In the winter of 1854 he again presented his petition in the Senate, and it was referred to the Committee on Post Offices and Post Roads, but no definite action has since been had. Your petitioner being sole owner of said demands and alone interested therein, never having sold, assigned, nor transferred the same, or any part thereof, insists that his claims abovementioned should be paid by the United States, with interest thereon from the time when he was entitled to the same, and prays that a favorable report may be made by this honorable court in relation thereto, to the end that an act may be passed by Congress for his relief.

He refers to the papers on the files of Congress and General Post Office, and requests that his case against the United States may be placed upon the docket of claims presented to this court, and that a commission may be issued for the purpose of obtaining the testimony of George Plitt, of Philadelphia, Joseph Cunningham, of Trenton, New Jersey, John V. D. Joline, of Princeton, New Jersey, and Peter R. Stelle, of New York city, in support of the claims above mentioned.

Your petitioner further sheweth that the acceptance of his proposals, the contracts, and other papers and decisions referred to in this petition, are not in his possession, but are believed by him to be in the auditor's office of the Post Office Department; and your petitioner has caused application to be made to the General Post Office Department for a copy of said contracts; but the Second Assistant Postmaster General, in pursuance of a rule of the Postmaster General, has refused such copies without an order of this court for that purpose, for which order your petitioner now applies, and prays it may be granted.

Respectfully submitted.

ALEXANDER M. CUMMING.

PRINCETON, NEW JERSEY, *January 15, 1856.*

STATE OF NEW JERSEY, }
Mercer county, } ss.

On this twenty-fifth day of January, 1856, before the subscriber, a justice of the peace in and for said county, personally appeared Alexander M. Cumming, above named, and made oath in due form of law, that the facts stated in the above petition are true to the best of his knowledge and belief.

ALEXANDER M. CUMMING.

Sworn and subscribed this twenty-fifth day of January, A. D. 1856, before me.

AUGUSTUS L. MARTIN,
Justice of the Peace.

No. 1.

"I propose to transport the mail on route No. 951, from New York to Philadelphia daily, in postcoaches or suitable carriages and railroad cars with guards as advertised, for the yearly compensation of \$13,125. Or if my proposal for route No. 952 should be accepted, I will deduct twenty per cent. from the above amount of \$13,125.

"ALEXANDER M. CUMMING.

"OCTOBER 15, 1835."

I certify that the foregoing is a true copy of the proposal, recorded on one of the route books of this department, of A. M. Cumming, for conveying the mail on route No. 951, New York to Philadelphia, from January 1, 1836, to December 31, 1839.

In testimony whereof I have hereunto set my hand, and caused the seal of the Post Office Department to be affixed, this 27th
[L. s.] May, 1856.

JAMES CAMPBELL,
Postmaster General.

No. 2.

R. F. Stockton agrees to carry the express mail and great mail consolidated in railroad cars, &c., for the lowest bid for an express mail, viz: \$14,000, added to the present cost of the great mail, \$10,500, conforming to the hours required by the department, and to carry into contract a bid for a second mail between New York and Philadelphia accepted at the last lettings at \$3,000, giving two daily mails between the two cities by railroad.

It is deemed the interest of the department to carry this proposition into contract.

A. K.

SEPTEMBER 16, 1836.

I certify that the foregoing is a true copy of a record on one of the route books of the Post Office Department for the year 1836, and that the annexed is a true copy of the acceptance of a proposal of A. M. Cumming for conveying the mail on routes No. 951 and 952, New York to Philadelphia, from January 1, 1836, to December 31, 1839, as recorded on one of the letter books of this department.

In testimony whereof I have hereunto set my hand, and caused the seal of the Post Office Department to be hereto affixed,
[L. s.] this 27th May, 1856.

JAMES CAMPBELL,
Postmaster General.

POST OFFICE DEPARTMENT,
Northern Division, December 3, 1835.

SIR: The Postmaster General has accepted your proposal for transporting the mail on route No. 951 at \$13,125, with a deduction of twenty per cent., and on condition that in case any arrangement shall hereafter be made under the authority of Congress to carry the mail for the whole or any part of the route on railroad, then your contract to be annulled, or there shall be a *pro rata* deduction, as the case may be.

And he has also accepted your proposal for route No. 952 at \$9,990 per annum, with a deduction of ten per cent., and under the same condition as No. 951, to be run by Trenton, Princeton, Brunswick, Newark, &c.

Contracts and bond will be forwarded for your execution.

S. R. HOBBIE,

First Assistant Postmaster General.

A. M. CUMMING, Esq., *Newark, N. J.*

Nos. 3 and 4.

POST OFFICE DEPARTMENT, *April 16, 1856.*

SIR: I enclose herewith, for the use of the Court of Claims, and in compliance with its order of the 10th instant, certified copies of the contracts of A. M. Cumming for mail service on routes 951 and 952, New York to Philadelphia, from 1836 to 1839.

Prior to the passage of the act of July 2, 1836, "to change the organization of the Post Office Department," &c., all proposals for conveying the mail were required by law to be deposited in the office of the Comptroller of the Treasury; and as the service under these contracts commenced January 1, 1836, it is presumed the proposals were so disposed of; but on the route book two proposals of Mr. Cumming, dated October 15, 1835, are found recorded, copies of which are given, being those under which the contracts are made, and the department having no knowledge of any of the date of December 3, 1835, mentioned in the order of the Court.

Very respectfully, your obedient servant,

W. H. DUNDAS,

Second Assistant Postmaster General.

S. H. HUNTINGTON, Esq.,

Chief Clerk Court of Claims.

POST OFFICE DEPARTMENT.

I certify that the annexed is a true copy of a contract with Alexander M. Cumming for carrying the mail of the United States on route No. 951, from New York, New York, to Philadelphia, Pennsylvania, now on file in this department.

In testimony whereof I have hereto set my hand, and caused the seal of the Post Office Department to be affixed, at the
[L. S.] General Post Office, in the city of Washington, this 15th day of April, A. D. 1856.

JAMES CAMPBELL,

Postmaster General.

No. 3.

No. 951.—\$10,500—\$2,625.

This contract, made the twenty-seventh day of October, in the year one thousand eight hundred and thirty-five, between Alexander M. Cumming, of Newark, New Jersey, contractor for carrying the mails of the United States, of one part, and the Postmaster General of the United States, of the other part, witnesseth: that the said parties have mutually covenanted as follows, viz: The said contractor covenants with the Postmaster General—

1. To carry the mail of the United States from New York, New York, by Jersey City, New Jersey, Newark, Elizabethtown, Rahway, Methuen, New Brunswick, Kingston, Princeton, Trenton, Morrisville, Pennsylvania, Tulleytown, Bristol, Bridgewater, and Andalusia, to Philadelphia and back daily, in four-horse post coaches and railroad cars; mail coach to be limited to three outside passengers, and the mail to be accompanied on railroad by a guard provided at the expense of the contractor, on condition that in case any arrangement shall hereafter be made under the authority of Congress, to carry the mails for the whole or any part of the route on railroads, then this contract shall be annulled, or there shall be a *pro rata* deduction, as the case may be, at the rate of two thousand six hundred and twenty-five dollars for every quarter of a year during the continuance of this contract, to be paid by postmasters on the route above mentioned, or otherwise at the option of the Postmaster General, in the months of May, August, November, and February.

2. That the mail shall be duly delivered at and taken from each post office now established, or that may be established, on the route embraced in this contract; that it shall be conveyed on this route in the time specified in the annexed schedule, and in a secure and safe manner, free from wet or other injury, in a secure dry boot or box under the driver's seat if the mail is carried by stage or coach, or under a sufficient oil cloth or bear skin when carried on horseback or sulky, as herinbefore designated, or hereafter directed by the Postmaster General; that it shall be duly delivered into the post office at

the end of the route, and into the post office at the place at which the carrier stops at night, if one is there kept, and if no office is there kept it shall be locked up in some secure place, at the contractor's risk.

3. That if the contractor shall run a stage or other vehicle more rapidly or more frequently than he is required by the contract to carry the mail, he shall give the same increased celerity and frequency to the mail, and without increase of compensation.

4. That the contractor, if on a stage or coach route, shall, in the conveyance of passengers, give a preference to those who are brought in the connecting mail lines over those travelling in any other, so that connecting mail stage routes shall form continuous travelling lines.

5. That he shall not, by himself or his agent, transmit, or be concerned in transmitting, commercial intelligence by express, more rapidly than by mail.

6. That the contractor will, if required by the Postmaster General, collect quarterly of postmasters on said route, the balances due from them to the General Post Office, and faithfully render an account thereof to the Postmaster General in the settlement of quarterly accounts, and will pay over to the General Post Office all balances remaining in his hands.

7. That in every case of failure to perform the trip, whatever may be the cause, there shall be a forfeiture of the pay for the trip, and a failure to arrive at a post office so long after the time set in the schedule as to lose the connexion with a depending mail shall be considered as equal to a whole trip lost; which forfeiture may be increased into a penalty not exceeding one hundred dollars, according to the circumstances under which the failure occurred.

8. That the contractor shall be subject for failure to take or deliver a mail or any part of a mail, for suffering the mail to be wet or otherwise injured, or lost, or destroyed, to a penalty of ten dollars, which may be increased to one hundred dollars, according to the size and importance of the mail, and the circumstances under which the failure occurred.

9. That a fine not less than a tenth part, and not exceeding the half of the price of a trip; may be imposed for each ten minutes' delay of the mail to arrive at the time specified in the schedule.

10. That the contractor shall be answerable for the persons to whom he shall commit the care and transportation of the mail, and accountable for any damages which may be sustained through their unfaithfulness or want of care; and that he will discharge any driver or carrier of said mail whenever required to do so by the Postmaster General.

11. That the schedules being arranged so as to allow seven minutes to each post office for opening and closing the mails generally, and one hour to the distributing post offices, the Postmaster General is to have, nevertheless, the power of extending the time, on allowing the like extension to the contractor if he shall claim it.

12. That the Postmaster General may increase the speed and alter the times of arrival and departure fixed by the schedules, and alter the route, he making adequate compensation for any expense occa-

sioned thereby, not, however, to exceed the exact proportion of the original amount to the additional duties required.

13. That the Postmaster General may curtail the service or dispense with it entirely, he allowing one month's extra pay upon the amount deducted, in case he wishes to place on the route a higher degree of service than is contracted for, first offering the privilege to the contractor on the route of performing such higher service, on the terms that can be obtained; or whenever he shall deem it expedient to lessen the service, or to leave such route, or any part of it, out of operation, or to carry the mail by steamboat or railroad cars; provided that reduction of compensation in consequence of reduction of service shall not exceed the exact proportion which the service dispensed with bears to the whole service.

14. That the Postmaster General may annul the contract for repeated failures of the contractor to perform any of the stipulations of the contract; for violating the Post Office laws, or disobeying the instructions of the department; or for assigning his contract without the previous consent of the Postmaster General first obtained.

15. The said Postmaster General covenants with the said contractor to pay as aforesaid, at the rate aforementioned, quarterly, in the months of May, August, November, and February; provided always, that this contract shall be null and void in case the contractor or any person that may become interested in this contract, directly or indirectly, shall become a postmaster or an assistant postmaster. No member of Congress shall be admitted to any share or part of this contract or agreement, or to any benefit to arise thereupon; and this contract shall in all its parts be subject to the terms and requisitions of an act of Congress, passed on the twenty-first day of April, in the year of our Lord one thousand eight hundred and eight, entitled "An act concerning public contracts."

And it is mutually covenanted and agreed by the said parties, that this contract shall commence on the 1st day of January, 1836, and continue in force until the 31st day of December, inclusively, which will be in the year one thousand eight hundred and thirty-nine, unless the Postmaster General shall decide to terminate this contract on the 30th September, 1839, or the 30th June, 1839, which he has the right to do on forwarding six months' previous notice of his intention to determine this contract on one of those days.

In witness whereof, they have hereunto interchangeably set their hands and seals.

ALEX. M. CUMMING, [L. s.]

Signed, sealed, and delivered in the presence of—

P. ALLING. December 16, 1835.

This schedule subject to alteration by the Postmaster General, agreeably to the provisions contained in the twelfth section of the contract.

Leave New York every day at 5 p. m.

Arrive at Philadelphia next day by 5 a. m., or earlier if practicable.

Leave Philadelphia every day at 6 p. m.

Arrive at New York next day by 6 a. m., or earlier if practicable.

I, Alexander M. Cumming, being appointed a mail contractor, do swear that I will faithfully perform all the duties required of me, and abstain from everything forbidden by the law in relation to the establishment of post offices and post roads within the United States; and I do solemnly swear that I will support the Constitution of the United States.

ALEX. M. CUMMING.

Sworn before the subscriber, a justice of the peace for the county of Essex, this sixteenth day of December, A. D. one thousand eight hundred and thirty-five.

STEPHEN DON,
Justice of the Peace.

Know all men by these presents that we, Alexander M. Cumming as principal, and William Stevens and Joseph C. Hornblower as securities, are held and firm bound unto the Postmaster General of the United States of America in the just and full sum of twenty thousand dollars, value received, to be paid unto the Postmaster General, or his successors in office, or to his or their assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals. Dated the sixteenth day of December, in the year of our Lord one thousand eight hundred and thirty-five.

The condition of this obligation is such that, whereas the above bounden Alexander M. Cumming, by a certain contract bearing date the twenty-seventh day of October, in the year of our Lord one thousand eight hundred and thirty-five, covenanted with the said Postmaster General to carry the mail of the United States from New York to Philadelphia, as per contract annexed, commencing the first day of January, one thousand eight hundred and thirty-six, and ending the thirty-first day of December which will be in the year one thousand eight hundred and thirty-nine:

Now, if the said Alexander M. Cumming shall well and truly perform the covenants in the said indenture expressed on his part to be performed, and shall account for all penalties, and shall promptly repay all balances that may at any time be found due from him, then this bond is to be void, otherwise to remain in full force.

ALEX. M. CUMMING, [L. s.]
WILLIAM STEVENS, [L. s.]
JOS. C. HORNBLOWER, [L. s.]

Signed, sealed, and delivered in the presence of—
P. ALLING. December 16, 1835.

POST OFFICE DEPARTMENT.

I certify that the annexed is a true copy of a contract with Alexander M. Cumming for carrying the mail of the United States on route

No. 952, from New York, New York, to Philadelphia, Pennsylvania, now on file in this department; and that the marginal and other entries in red ink, are true copies of orders and official statements duly made, modifying and affecting said contract.

In testimony whereof, I have hereto set my hand, and caused the seal of the Post Office Department to be affixed, at the [SEAL.] General Post Office in the city of Washington, this fifteenth day of April, A. D. 1856.

JAMES CAMPBELL,
Postmaster General.

No. 4.

No. 952.—\$8,991—\$2,247 75.

This contract, made the twenty-seventh day of October, in the year one thousand eight hundred and thirty-five, between Alexander M. Cumming, of Newark, New Jersey, contractor for carrying the mails of the United States, of one part, and the Postmaster General of the United States of the other part, witnesseth: that the said parties have mutually covenanted, as follows, viz: The said contractor covenants with the Postmaster General—

1. To carry the mail of the United States from New York, New York, by Jersey City, New Jersey, Newark, Elizabethtown, Rahway, Methuen, New Brunswick, Kingston, Princeton, Trenton, Morrisville, Pennsylvania, Tullytown, Bristol, Bridgewater, and Andalusia, to Philadelphia and back daily, in four-horse post coaches and railroad cars, on condition that in case any arrangement shall hereafter be made under the authority of Congress, to carry the mails for the whole or any part of the route on railroads, then this contract shall be annulled, or there shall be a pro rata deduction, as the case may be, at the rate of two thousand two hundred and forty-seven and $\frac{7}{10}$ dollars for every quarter of a year during the continuance of this contract, to be paid by the postmasters on the route above mentioned, or otherwise, at the option of the Postmaster General, in the months of May, August, November, and February.

2. That the mail shall be duly delivered at, and taken from, each post office now established, or that may be established on the route embraced in this contract; that it shall be conveyed on this route in the time specified in the annexed schedule, and in a secure and safe manner, free from wet or other injury, in a secure dry boot or box under the driver's seat, if the mail is carried by stage or coach, or under a sufficient oil cloth or bear skin when carried on horseback or sulkey, as hereinbefore designated, or hereafter directed by the Postmaster General; that it shall be duly delivered into the post office at the end of the route, and into the post office at the place at which the carrier stops at night, if one is there kept, and if no office is there kept it shall be locked up in some secure place, at the contractor's risk.

3. That if the contractor shall run a stage or other vehicle more speedily or more frequently than he is required by the contract to carry the mail, he shall give the same increased celerity and frequency to the mail, and without increase of compensation.

4. That the contractor, if on a stage or coach route, shall in the conveyance of passengers give a preference to those who are brought in the connecting mail lines over those travelling in any other, so that connecting mail stage routes shall form continuous travelling lines.

5. That he shall not by himself or his agent transmit, or be concerned in transmitting commercial intelligence by express more rapidly than by mail.

6. That the contractor will, if required by the Postmaster General, collect quarterly of postmasters on said route, the balances due from them to the General Post Office, and faithfully render an account thereof to the Postmaster General in the settlement of quarterly accounts, and will pay over to the General Post Office all balances remaining in his hands.

7. That in every case of failure to perform the trip, whatever may be the cause, there shall be a forfeiture of the pay for the trip; and a failure to arrive at a post office so long after the time set in the schedule as to lose the connexion with a depending mail shall be considered as equal to a whole trip lost; which forfeiture may be increased into a penalty not exceeding one hundred dollars, according to the circumstances under which the failure occurred.

8. That the contractor shall be subject for failure to take or deliver a mail or any part of a mail, for suffering the mail to be wet or otherwise injured, or lost, or destroyed, to a penalty of ten dollars, which may be increased to one hundred dollars, according to the size and importance of the mail and the circumstances under which the failure occurred.

9. That a fine, not less than the tenth part, and not exceeding the half of the price of a trip, may be imposed for each ten minutes' delay of the mail to arrive at the time specified in the schedule.

10. That the contractor shall be answerable for the persons to whom he shall commit the care and transportation of the mail, and accountable for any damages which may be sustained through their unfaithfulness or want of care; and that he will discharge any driver or carrier of said mail whenever required to do so by the Postmaster General.

11. That the schedule being arranged so as to allow seven minutes to each post office for opening and closing the mails generally, and one hour to the distributing post offices, the Postmaster General is to have, nevertheless, the power of extending the time on allowing the like extension to the contractor, if he shall claim it.

12. That the Postmaster General may increase the speed and alter the times of arrival and departure fixed by the schedule, and also the route, he making adequate compensation for any expense occasioned thereby; not however "to exceed the exact proportion of the original amount to the additional duties required."

13. That the Postmaster General may curtail the service or dis-

pense with it entirely, he allowing one month's extra pay upon the amount deducted, in case he wishes to place on the route a higher degree of service than is contracted for, first offering the privilege to the contractor on the route of performing such higher service on the terms that can be obtained; or whenever he shall deem it expedient to lessen the service, or to leave such route or any part of it out of operation, or to carry the mail by steamboat or railroad cars provided, that reduction of compensation in consequence of reduction of service shall not exceed the exact proportion which the service dispensed with bears to the whole service.

14. That the Postmaster General may annul the contract for repeated failures of the contractor to perform any of the stipulations of the contract; for violating the post office law, or disobeying the instructions of the department, or for assigning his contract without the previous consent of the Postmaster General first obtained.

15. The said Postmaster General covenants with the said contractor to pay as aforesaid, at the rate aforementioned, quarterly in the months of May, August, November and February.

Provided always, That this contract shall be null and void in case the contractor or any person that may become interested in this contract directly or indirectly, shall become a postmaster or assistant postmaster. No member of Congress shall be admitted to any share or part of this contract or agreement, or to any benefit to arise thereupon; and this contract shall in all its parts be subject to the terms and requisition of an act of Congress, passed on the twenty-first day of April, in the year of our Lord one thousand eight hundred and eight, entitled "An act concerning public contracts."

And it is mutually covenanted and agreed by the said parties, that this contract shall commence on the first day of January 1836, and continue in force until the 31st day of December, inclusively, which will be in the year one thousand eight hundred and thirty-nine, unless the Postmaster General shall decide to terminate this contract on the 30th September, 1839, or the 30th June, 1839, which he has the right to do on forwarding six months' previous notice of his intention to determine this contract on one of those days.

In witness whereof they have hereunto interchangeably set their hands and seals.

ALEX. M. CUMMING, [SEAL.]

Signed, sealed and delivered
in the presence of—

P. ALLING. December 16, 1835.

October 2.—Omit Sunday trip, at a reduction of \$1,714 per annum, until the further order of the department.

Postmaster at Philadelphia reports this order carried into effect October 8, 1837.

November 14, 1836.—It is ordered by the Postmaster General that contractor be offered an increased pay of \$3,009 on condition that he run a second daily line from New York to New Brunswick, carrying both mails on the East Jersey railroad, and also carrying the single

daily mail between Trenton and Philadelphia on the Trenton railroad, with permission to omit the Sunday trip at a pro rata reduction of pay, viz: \$1,714.

November 25, 1839.—Postmaster General directs that the term of this contract be extended to June 30, 1840.

This schedule subject to alteration by the Postmaster General, agreeably to the provision contained in the twelfth section of the contract.

Leave New York every day at 6 a. m. Arrive at Philadelphia same day by 6 p. m. or earlier if practicable.

Leave Philadelphia every day at 6 a. m. Arrive at New York same day by 6 p. m., or earlier if practicable.

Schedule adopted January 10, 1837.

Leave New York daily at 7 a. m. and $3\frac{1}{2}$ p. m.

Leave New Brunswick by 7 a. m. and $2\frac{1}{2}$ p. m.

Arrive at Philadelphia by 7 p. m.

Leave Philadelphia at 9 p. m.

Arrive at New York by 9 p. m.

July 17, 1837.

The Postmaster General allows Saturday night's mail to leave Philadelphia at 8 p. m. February 28, 1838, change schedule of second daily mail so as to leave New Brunswick early enough to take the 2 p. m. train from Newark to New York.

January 13, 1840.

Leave New York daily (except Sunday) at $7\frac{1}{2}$ a. m.

Arrive at Philadelphia same day by $7\frac{1}{2}$ p. m.

Leave Philadelphia daily (except Sunday) at 4 a. m., or earlier if the morning papers are in.

Arrive at New York same day by 4 p. m.

Second daily mail between New York and New Brunswick to be the same as heretofore.

March 19, 1840.

Leave New York daily (except Sunday) at $7\frac{1}{2}$ a. m.

Arrive at Philadelphia same day by $7\frac{1}{2}$ p. m.

Leave Philadelphia daily (except Sunday) at 9 p. m.

Arrive at New York next day by 9 a. m.

I, Alexander M. Cumming, being appointed a mail contractor, do swear that I will faithfully perform all the duties required of me, and abstain from everything forbidden by the law in relation to the establishment of post offices and post roads within the United States. And I do solemnly swear that I will support the Constitution of the United States.

ALEXANDER M. CUMMING.

Sworn before the subscriber, a justice of the peace for the county of Essex, this sixteenth day of December, anno Domini, one thousand eight hundred and thirty-five.

STEPHEN LORD,
Justice of the Peace.

Know all men by these presents, that we, Alexander M. Cumming as principal, and William Stevens and Joseph M. Hornblower as securities, are held and firm bound unto the Postmaster General of the United States of America in the just and full sum of fifteen thousand dollars, value received, to be paid unto the Postmaster General, or his successor in office, or to his or their assigns; to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, dated the sixteenth day of December, in the year of our Lord one thousand eight hundred and thirty-five.

The condition of this obligation is such that, whereas the above bounden Alexander M. Cumming by a certain contract bearing date the twenty-seventh day of October, in the year of our Lord one thousand eight hundred and thirty-five, covenanted with the said Postmaster General to carry the mail of the United States from New York to Philadelphia, as per contract annexed, commencing the first day of January one thousand eight hundred and thirty-six, and ending the thirty-first day of December which will be in the year one thousand eight hundred and thirty-nine:

Now, if the said Alexander M. Cumming shall well and truly perform the covenants in the said indenture expressed on his part to be performed, and shall account for all penalties, and shall promptly repay all balances that may at any time be found due from him, then this bond is to be void, otherwise to remain in full force.

ALEX. M. CUMMING,	[SEAL.]
WILLIAM STEVENS,	[SEAL.]
JOSEPH C. HORNBLOWER.	[SEAL.]

Signed, sealed and delivered
in presence of—

P. ALLING. December 16, 1835.

No. 5.

AUDITOR'S OFFICE, POST OFFICE DEPARTMENT,
November 19, 1841.

SIR: A. M. Cumming has submitted a claim against the Post Office Department to audit and allow, amounting to \$3,496 50, or the balance that may be due said Cumming on route No. 952, (old service, New York to Philadelphia,) as set forth in the statement. If

the Post Office Department is in possession of any papers or information necessary for me to obtain to a full and perfect understanding of the facts, I will thank you for them.

Most sincerely, yours,

E. WHITTLESEY.

S. R. HOBBIE, Esq.,

First Assistant Postmaster General.

No. 6.

A. M. Cumming's Case.

AUDITOR'S OFFICE, POST OFFICE DEPARTMENT,
December 6, 1841.

The Postmaster General in 1835 advertised mail routes Nos. 951 and 952, from New York to Philadelphia, inviting proposals for contracts to transport the mail on them from January 1, 1836, to the 31st of December, 1839, unless he should terminate the contracts the last of June or September.

A. M. Cumming offered proposals for both routes which were accepted. His proposal for route 952 was as follows: "I propose to transport the mail on route 952, from New York to Philadelphia, as advertised, in four-horse post coaches and railroad cars, for the yearly compensation of \$9,990; or, if my bid for route No. 951 is accepted, I will deduct 10 per cent. from the above amount of \$9,990." He was notified of the acceptance of his proposal in the following words:

"And he (the Postmaster General) has also accepted your proposal for No. 952 at \$9,990 per annum, with a deduction of ten per cent. and under the same condition as No. 951, to run by Trenton, Princeton, Brunswick, Newark, &c."

Contracts were signed by the parties on the 27th day of October, 1835, containing in addition to the usual stipulation in the first article the following, after describing the route, the number of trips, and mode of conveyance, which is the condition referred to in the acceptance, to wit: "On condition that in case any arrangement shall hereafter be made under the authority of Congress to carry the mails for the whole or any part of the route on railroad, then this contract shall be cancelled, or there shall be a pro rata deduction, as the case may be."

A contract was signed also to carry the mail on route 951. The mail was transferred on the last mentioned route until January 1, 1837. The department having made a contract with the railroad company that superseded the service on 951, the contract with Mr. Cumming for that route was annulled and he was allowed \$3,009 to perform extra service on route 952, leaving the compensation for the regular service on this route at \$8,971, the contract price, that being the sum contained in the proposal after deducting ten per cent. from \$9,990, in consideration of having a contract for route 951. Having heard that the Postmaster General contemplated to annul one of the

contracts, Mr. Cumming, on the 16th of September, 1836, remonstrated against the measure and set forth its ruinous consequences to him if it should take place. Soon after the contract for route No. 951 was annulled, Mr. Cumming applied to the Postmaster General to pay him for the regular service on route No. 952 the annual compensation of \$9,990, the sum contained in the proposals, if route No. 951 should not be assigned to him.

Mr. Hobbie, 1st Assistant Postmaster General, on the 10th of June, 1837, communicated the decision of Mr. Kendall, then Postmaster General, in the following words: "No allowance can be made of the ten per cent. claimed; the Postmaster General considers himself inhibited by the provisions of the act of 1836 from making such allowance." A renewed application was made by M. St. Clair Clarke, on behalf of Mr. Cumming, for the ten per cent. deduction on \$9,990 during the continuance of the contract, after the service on route 951 was dispensed with, amounting to \$3,496 50, which was rejected by Mr. Niles on the 3d of March, 1841, in the following decision: "The subsequent action of the department in curtailing or annulling the contracts or either of them, cannot affect the original terms of the contract not annulled."

Failing to obtain relief at the hands of the Postmaster General mentioned, application was made to the Auditor for the Post Office Department by Mr. Dow, agent for Mr. Cumming in his letter dated October 18, 1841. Although an early consideration of the subject was then asked, and has been repeated since, I have been prevented from examining it by circumstances beyond my control until the present time. A report is demanded of the Auditor in favor of Mr. Cumming for \$3,496 50 or the balance that may be due on route No. 952, as set forth in a case stated on the 6th of June 1841. The first inquiry naturally presented by the fact that the claimant has applied to two Postmaster Generals for relief is, has the Auditor the legal power to comply with the demand?

In the eighth section of the act approved July 2, 1836, it is made the duty of the Auditor, "to receive all accounts arising in the said Department, or relative thereto, to audit and settle the same, and certify their balances to the Postmaster General."

So far as mail contractors are concerned their accounts must arise from contracts between them and the Postmaster General. The Auditor cannot legally make any contract, nor give damages for the breach of a contract made by the Postmaster General, nor change, alter, or modify one that he has made.

In the eleventh section it is made the duty of the Postmaster General within sixty days after the making of any contract, to cause a duplicate thereof to be lodged in the office of the Auditor of the Post Office Department.

I am asked as Auditor to go behind the contract of October 27, 1835, and look at the proposal and acceptance and determine from them what the intention of the parties was when they were negotiating with each other relative to the terms of a contract for transporting the mail on route 952; but the proposal nor acceptance is

officially before me, and I cannot under the law look into them to form an opinion from them as to the intention of the parties. The contract, it appears, from a duplicate filed in this office, is explicit, and defines in language unambiguous the terms of an agreement. If I was satisfied that there was a mistake, I could not correct it.

The Auditor is not clothed with chancery powers, and he is restricted more than once by the act of July 2, 1836, to acts warranted by law.

Mr. Cumming having received all the money for transporting the mail on route No. 952 that the Postmaster General agreed to pay him by the contract referred to, as the same appears by a duplicate filed in this office, I decide, I cannot, without violation of law, report that Mr. Cumming has a legal claim to the money demanded, nor to any part of it.

Very respectfully, your obedient servant,

E. WHITTLESEY,
Auditor.

No. 7.

A. M. Cumming's case for extra compensation for carrying the mail on route 951, in the month of January, 1836.

AUDITOR'S OFFICE, POST OFFICE DEPARTMENT,
February 19, 1843.

The claimant presents an account, amounting to \$827 71, for money expended in forwarding the mails during an unusually inclement season. He says, and it is confirmed by Mr. Plitt, then a special mail agent, that the mails from the south did not arrive, at periods, for two or three days in succession at Philadelphia, and that the like delay of the mails from the east existed at New York, which devolved upon Mr. Cumming such an extraordinary quantity of mails as made it wholly impracticable for him to transport them by his means, which were ample for the regular mails; and that he incurred the above mentioned expense in obedience to the requirement of Mr. Plitt, whose directions were approved, as were also the exertions of the claimant.

It appears from letters from Plitt and from Page, then postmaster at Philadelphia, that Mr. Cumming was prompted to use extraordinary exertions to carry the mails thus accumulated, under strong assurances that he should be remunerated for his extraordinary expenses.

"The account was submitted to Mr. Kendall on the regular vouchers; and on the 28th of September, 1836, he made the following decision: The contractor exerted himself in a manner highly creditable to get his mails through; but as he effected no more than he was bound to do by his contract, the Postmaster General has no legal authority to allow him any additional compensation.

"Contractor was bound to carry the mail from Philadelphia to New York, embracing, of course, all the mails which came in at intermediate points. The Owego mail connected with his at the Newark office, and from that office, and of course it was a part of his service to take it to and from that office. The railroad is not known in his contract.

"A. K.

"SEPTEMBER 28, 1836."

Afterwards, on the 29th of October, 1836, it was brought before the Auditor, with other claims; and, as to the latter, he reported in his favor \$4,734 93; and to this claim he says, "your claim for extra compensation appears to have been disallowed by the Postmaster General on the 28th ultimo, in a decision which he recites. If the claim was of the kind that the Auditor was empowered to decide, he virtually adopted the decision of the Postmaster General and made it his own, and thereby rejected the claim; but, in my opinion, the Auditor cannot legally act on the merits of the claim, or order of the Postmaster General, or for services which he recognizes under his contract or order.

The claim was presented to Mr. Niles, and on the 3d of March he wrote as follows; "Proof is insufficient to show that the sum claimed has been actually expended, or to show what, in fact, was expended in performing the extraordinary service charged for.

"J. M. N.

"MARCH 3, 1841."

It is contended by the claimant that this was re-opening the case; that no decision was made on its merits, because the vouchers were destroyed by the fire in December, 1836, which are now supplied by copies, with the exception of vouchers to cover about \$50 of the claim. With this secondary testimony the claim was submitted to the present Postmaster General, who said, "this case having been decided by a former Postmaster General, I have no power to reverse that decision. December 9, 1841," &c.

This decision is based on the opinion of the Attorney General. The case is submitted to me as Auditor under the circumstances and facts mentioned, and, after full consideration of them, I decide—

1st. That the claimant is concluded by the decision of Mr. Kendall.

2d. That if it were otherwise, inasmuch as the claim is for extraordinary services, not provided for in any contract or order of the Postmaster General, nor for services which he has recognized, I am not by law empowered to allow the claim, nor any part of it.

Most sincerely, &c.,

E. WHITTELSEY,

Auditor

No. 8.

Case of Mr. A. M. Cumming, contractor for carrying the United States mail on route No. 952, from New York to Philadelphia.

COMPTROLLER'S OFFICE,
February 16, 1842.

From two letters of the Auditor of the Post Office Department, dated December 6 and 10, 1841, a copy of the contract and other papers relating thereto, the following facts appear:

Proposals were invited for said route, 952, as also for route 951, being a parallel route to 952.

On the 15th October, 1835, Mr. Cumming made two proposals for carrying the mail on these routes. On route 952 for \$9,990 per annum, in four-horse post coaches and railroad cars; or, if his bid for route 951 is accepted, he will deduct 10 per cent. from the above. On route 951 he proposes to carry the mail for \$13,125 per annum, or if his bid for route 952 is accepted, he will "deduct 20 per cent. from the above."

On the 3d December, 1835, the Assistant Postmaster General advised Mr. Cumming that both bids had been accepted, subject to the deduction in each case, as proposed.

The contract for route 952, the only one before this office, bears date October 27, 1835, (before the notice to Mr. Cumming that his bid was accepted,) and to take effect from the 1st January, 1836, and which contains a "condition that in case any arrangement shall hereafter be made under the authority of Congress to carry the mails for the whole or any part of the route on railroads, then this contract shall be annulled, or there shall be a pro rata deduction, as the case may be."

The first act of Congress authorizing the United States mail to be carried on railroads was approved July 7, 1838. The 13th section of contract for route 952 authorizes the Postmaster General to "curtail the service, or *dispense with it entirely*, he allowing *one month's extra pay* upon the amount deducted, in case he wishes to place on the route a higher degree of service than is contracted for," &c.

On the 6th December, 1836, contract for route 951 was annulled, to take effect after December 31, 1836, and Mr. Cumming received the one month's extra pay, (he having, on the 16th September preceding, remonstrated against the annulment, which he was informed the department intended.)

On the 14th November, 1836, the Postmaster General ordered that the contractor be offered an increase pay of \$3,000 upon route 952, on condition that he run a second daily line from New York to New Brunswick, &c. This was accepted by Mr. Cumming; and by a letter of June 10, 1837, to him from the First Assistant Postmaster General, the following decision of the Postmaster General was communicated:

"The order of December 6, annulling the contract, (for route 951,) was a countermand of the service, which should be paid for only to

the time of its receipt, say the 8th of December, the month's extra pay being allowed to cover the loss of the change." The pay for the new arrangement may commence from the 8th December, 1836.

In consequence of the annulment of contract for route 951, Mr. Cumming applied to the Post Office Department for the 10 per cent. on 952, agreeably to his *proposal*, and which he states had been deducted therefrom in making the contract. On the 10th June, 1837, the Assistant Postmaster General informed him that "the claim for restoration of the 10 per cent. on 952 is not allowed by the Postmaster General, conceiving himself wholly inhibited by the provisions of the act of 1836 from doing it."

Another application was made for an allowance of this 10 per cent. to the Auditor of the Post Office Department on the 18th October, 141, by Jesse E. Dow, esq., agent for said Cumming; and on the 6th December following the same was also disallowed by the Auditor. An appeal is now made to this office under the act of July 2, 1836, which directs the Auditor of the Treasury for the Post Office Department to receive all accounts arising in the said department, or relative thereto, to audit and settle the same, and certify their balances to the Postmaster General, *provided*, that if either the Postmaster General, or any person whose account shall be settled, be dissatisfied therewith, he may, within twelve months, appeal to the First Comptroller of the Treasury, whose decision shall be final and conclusive."

As regards the claim now made I would remark, that whatever may have been the intention or understanding of Mr. Cumming in making his proposals, and which include certain conditions to his contracting for carrying the mail on the above route, no reference is made to those conditions in the contract which he made with the Post Office Department, and by which he unconditionally agrees that the Postmaster General has the right to "curtail the service, or dispense with it entirely, he allowing one month's extra pay upon the amount deducted." This extra pay having been received by Mr. Cumming for loss of service on route No. 951, his compensation for said loss, I am of opinion, has been fully paid agreeably to the terms of the contract.

Mr. Dow contends that the proposals made by Mr. Cummings should be considered by this office in connexion with the contract, in order to show the intention of the parties. In this I do not concur, but am of opinion that the act of 1836 does not authorize the Comptroller to go behind a written agreement, which, as in this case, is specific in its terms, in order to ascertain the merits of a claim presented for his action.

Whatever, therefore, there may be of equity in this claim of Mr. Cumming, no further allowance can be made by this office than has been already made by the Post Office Department.

The papers which accompanied your letter are herewith returned.

Very respectfully, your obedient servant,

J. N. BARKER,
Acting Comptroller.

E. WHITTLESEY, Esq.,
Auditor Post Office Department.

No. 9.

A. M. Cumming's case for pay for transporting the mail on route No. 951, from the 8th day of December, 1836, to January 1, 1837.

AUDITOR'S OFFICE, POST OFFICE DEPARTMENT,
February 19, 1842.

I am not aware that there are any grounds for controversy between the claimant and the department as to the facts in this case, except as to the time when the order of the 6th of December, 1836, was intended to, and did, take effect. It is agreed that Mr. Cumming was a contractor on route No. 951, from New York to Philadelphia, by a contract in the usual form, in which the Postmaster General reserved the power to dispense with a part, or with the whole service; that he did dispense with the further service by an order dated December 6, 1836; and that Mr. Cumming was paid for services performed to the 7th of December, 1836, inclusive.

A statement of facts was submitted to Mr. Kendall by the contract office, which will be copied so far as relates to route No. 951, and to the question submitted, to wit: "By letter dated December 6, 1836, Mr. Cumming was informed that his contract for No. 951 was annulled, a contract having been made with the Camden and Amboy Railroad Company to transport the great mail between New York and Philadelphia, and the arrangement made with him for the improvement on No. 952, supplying certain offices that depended on No. 951. The pay on No. 951 was stopped on 7th December, 1836; the schedule for the new arrangement bears date 21th December, 1836. Mr. Cumming contends that the letter of 6th December conveyed to him no instructions to discontinue the service on 951, and that he therefore continued till the close of the year, or until he received the new schedule of December 27, which alone he considered as authority to discontinue the old and commence the new arrangement. He insists that his pay on No 951 be continued to 31st December last. The only certificates on file, specific as to dates, are from the postmasters at Newark and New Brunswick, in which they state that they received two mails a day from Philadelphia, until the 1st of January, and since, but one mail a day."

The application for pay for the service performed between the 8th and 31st of December, inclusive, having been submitted to Mr. Kendall, he decided as follows, to wit: "The order of December 6th, annulling the contract, was a countermand of the service, which should be paid for only to the time of its receipt, say the 8th of December, the month's extra pay being allowed to cover the loss of the change.

"A. K.

"JUNE 8."

The mail register sent from Philadelphia confirms the certificates from the postmasters at Newark and New Brunswick that the mail was carried on route No. 951 until the 1st of January, 1837, notwith-

standing the order of the 6th of December, 1836, annulling the contract on that route.

The subject of difference is this : when did the order of December 6th take effect ? Mr. Kendall said it took effect as soon as it was made known to Mr. Cumming, which he supposed was on the following day. Mr. Cumming contends it did not take effect until the new schedule was delivered to meet the new arrangement, by which the service on route No. 951 was suspended. Mr. Kendall, upon the order itself to justify the decision he made, and Mr. Cumming relies upon a postscript to Mr. Hobbie's letter of November 14, 1836, as his authority for continuing to carry the mail until the 1st of January, 1857, and upon the fact that a new schedule was absolutely necessary to carry the new arrangement into effect, which was not made out until the 27th of December, and until that time, that the old agreement on both routes was in full force and effect.

The Postmaster General, by Mr. Hobbie, proposed to Mr. Cumming on the 14th of November, 1836, to increase his pay \$3,000 for a second daily line from New York to New Brunswick, carrying both mails, that and No. 952, on the East Jersey Railroad, and also carrying the single daily mail on No. 952, between Trenton and Philadelphia, on the Trenton Railroad, with permission to omit the Sunday trip, at a pro rata reduction of pay, viz : \$1,714, and in a postscript he said : "You will continue carrying mails on 951 and 952 until otherwise ordered."

Mr. Cumming gave a practical demonstration of what he supposed was his duty, by continuing to carry the mail until the new arrangement superseded the contract by a change of schedule, which bears date the 27th of December. It does not appear that the postmasters at the termination of route No. 951 were officially notified of the new arrangement until the schedule was changed, but the mail was delivered by them to Mr. Cumming, and by him carried as it had been before the order of the 6th of December.

Mr. Cumming again brought the subject of this claim before the Postmaster General, by his letter addressed to Mr. Hobbie, on the 2d of December, 1841, and on the 9th of December, 1841, Mr. Wickliffe disposed of it as follows : "The claim having been presented and rejected by a former Postmaster General, I do not feel myself at liberty to revise and reverse his decision.

"C. A. WICKLIFFE."

The Attorney General, in a case submitted to him, decided that when a former Postmaster General had disposed of a claim on its consideration, that his successor was not authorized to open the case and examine it again.

Failing to obtain relief on application to Mr. Kendall and to Mr. Wickliffe when Postmaster General, Mr. Cumming applied to me, as Auditor of the Treasury for the Post Office Department, to audit his claim, and to allow him \$700 for the service mentioned.

I have decided in the case of J. M. Sherwood, and in the case of Thomas A. Staples, that when a claimant has submitted his claim to

the Postmaster General he must abide by the decision he has made, and that an appeal does not lie to this office. These decisions will be adhered to until I am convinced they are erroneous.

The claimant has the right, in common with all others, to apply to Congress for relief when the accounting officers reject their claims; and it appears to me that it is doubtful whether the department can charge an old claim upon the present appropriation.

There is another feature of this case which I will notice. This office acts on contracts made by the Postmaster General and upon orders he gives, which may originate a claim. The Auditor is to be placed in possession of both by their being filed in this office. The order of the 6th of December, 1836, was so filed, and by its terms the contract for route 951 was annulled from that day, and therefore ceased to exist. The claimant relies upon the postscript to Mr. Hobbie's letter, of November 14, 1836, as his authority for continuing this service. Without determining whether the order of December 6 did not render void any previous order as well as the contract, I find that neither said letter nor the postscript was ever reported to this office, and not having been reported I cannot, under the act of July 2, 1836, act upon it although the letter is before me.

In consideration of the foregoing premises, I decide—

1st. That the claimant having submitted his claim to the Postmaster General and obtained his decision, is bound by it unless he obtains relief in Congress.

2d. That the order of December 6, 1836, annulled the contract for transporting the mail on route No. 951 from and after the 7th, when Mr. Cumming was notified of its existence; and there being no contract in existence for transporting the mail on said route, nor order in this office recognizing any service after that day, that the claimant has not established his right by such proof as is required by the act of July 2, 1836, to authorize and empower me to audit and allow him any further compensation.

E. WHITTLESEY,
Auditor.

No. 10.

AUDITOR'S OFFICE, POST OFFICE DEPARTMENT,
September 30, 1848.

On the 18th February, 1847, a joint resolution was passed, directing the Auditor of the Treasury for the Post Office Department to *examine* and *audit* the claims of Alexander M. Cumming, late mail contractor on routes 951 and 952 between Philadelphia and New York, between the years 1835 and 1839, and making it the duty of the Postmaster General to pay said Cumming the balance (if any) that may be justly and legally due him, under the contracts and orders from the

department and its agents, out of the current appropriation for mail transportation.

The original resolution was reported on the 30th of January, 1846, accompanied by a report from the Committee on Post Offices and Post Roads, in which two distinct claims on the part of Mr. Cumming are set forth within the period mentioned. The resolution so reported provided for the payment of the balance, if any, that may be justly and *equitably* due to Mr. Cumming ; but the resolution was amended and passed in the form above recited, so as to pay the balance, if any, which might be justly and legally due.

The two claims set forth were severally presented, in the first instance, to the successive Postmasters General, Messrs. Kendall, Niles, and Wickliffe, and were afterwards presented to my predecessor, Elisha Whittlesey, esq.

In the claim for continued service on route No. 951 Mr. Whittlesey decided, among other things, February 19, 1842 :

“That the claimant having submitted his claim to the Postmaster General and obtained his decision is bound by it, unless he obtains relief from Congress.”

And in the claim for extra service, in consequence of accumulation of mails :

1. “That the claimant is concluded by the decision of Mr. Kendall.

2. “That if it were otherwise, inasmuch as the claim is for extraordinary services not provided for in any contract or order of the Postmaster General, nor for services which he has recognized, I am not by law empowered to allow the claim, or any part of it.”

These quotations, as well as the decisions of Mr. Whittlesey at large, show that he did not decide, or indeed express any opinion, upon the merits of the claims.

From these facts it appears to me : 1st. That it was the design of the resolution, as passed, merely to remove the difficulty stated by Mr. Whittlesey, and to authorize a settlement of the claims by this office as an original question.

2d. That it was not its design to create any new rule for such settlement, but that it should be made upon the principles of law and justice, as they are applied to the accounts of all other contractors and other agents of the department.

No implication can be raised, from the mere passage of the resolution, that Congress considered the claimant had any just demand on the United States. The language “to pay the balance due, if any,” is abundant to show that Congress did not choose to decide that question.

The first claim to be considered is for continued service on route No. 951, from the 8th to the 31st December, 1836—23 days, at \$2,625 per quarter, making \$656 25.

The claimant entered into contract with the Department for carrying the mail on this route from Philadelphia to New York, from 1st January, 1836, to 31st December, 1839. This contract was intended for the conveyance of the great eastern mail. The schedule time of per-

forming the trip was twelve hours, and the contractor was limited to three outside passengers, the whole of the stage being reserved for the mail, which was to be provided with a guard. The contract contained also the following stipulation: "In case any arrangement shall hereafter be made under the authority of Congress to carry the mails for the whole or any part of the route on railroads, then this contract shall be annulled, or there shall be a pro rata deduction, as the case may be."

For the same period the claimant entered into contract for route No. 952, over the same ground, the schedule time of the trip being eighteen hours, and the route being intended for carrying the way mails and mail matter not demanding celerity of transit.

The contingency contemplated in the contract for route 951 arose in November, 1836. The department entered into an arrangement with the Camden and Amboy Railroad Company for carrying the great mail from and after the fifteenth of that month.

On the 14th November, 1836, Major Hobbie made a proposition to Mr. Cumming for an improvement of service on route 952, rendered necessary by the transfer of the great mail, and offered him an increased compensation of \$3,000 per annum for such improvement, and in a postscript to his letter says: "You will continue carrying mails on routes 951 and 952 until otherwise ordered." This postscript seems to be the sole authority for this claim; but I understand it to have been intended merely to guard against Mr. Cumming hastily discontinuing route No. 951 in consequence of the transfer of the mail to the Camden and Amboy company agreeably to the stipulation recited in the contract, and to keep route No. 951 alive for the intermediate mails until the new arrangement designed by his proposition should be agreed upon.

On the 6th December, 1836, Major Hobbie notified Mr. Cumming of the annulment of the contract as follows:

"SIR: An arrangement having been made with the Camden and Amboy Railroad Company for the conveyance of the great mail between New York and Philadelphia, and you having accepted the offer of the department for an improvement on route No. 952, which will supply certain of the towns in New Jersey with the mail, for which they depended on route No. 951, the Postmaster General has directed that your contract on route No. 951 be annulled and that you be allowed one month's extra pay.

"I am, respectfully, your obedient servant,

"S. R. HOBBIE."

I consider this notice as full and ample as the occasion required, and that, no time being specified therein, the annulment took effect from the date, or at least from the date when it should have been received by Mr. Cumming, by due course of mail, which was the 7th December, 1836, and that the service then legally and properly ceased.

The quantity or weight of mail is a matter of no moment in railroad service. Upon the arrangement being made with the Camden and

Amboy Railroad Company, the great burden of the mail was removed from Mr. Cumming, whether on route 951 or 952. All the through mail was, of course, carried upon it, and nothing was left for Mr. Cumming but the mail to and from the intermediate offices. It is a mistake, therefore, to suppose that Mr. Cumming continued *the service* on 951 after the 7th of December, 1836; in fact, he had ceased to carry the great mail, as well as a portion of the mail usually sent on 952, from the 15th of November, although he continued to be paid for both precisely as if he had carried the two entire mails to the former day, with the addition of one month's extra pay, which I think the Postmaster General might well have withheld under the stipulation in contract 951, before recited, if he had thought proper so to do.

Another fact is to be stated: that Mr. Cumming has been credited and paid the amount offered and accepted for the improved service on 952, to wit: \$3,000 per annum from the 8th of December, 1836, inclusive, the day following Major Hobbie's order of annulment. So that the allowance of this claim would give him, not only the pay of the great eastern mail from the 8th of December, after its transfer to the railroad, but the pay for the improved service on 952 rendered necessary by that transfer.

The second claim set forth is for extra compensation for carrying the mail on the before mentioned route, No. 951, soon after the commencement of the contract, to wit: in the month of January, 1836. The facts in this case are fully presented in the report of Mr. Whittlesey, before mentioned, of February 19, 1842, to which I refer. I may here state that the original vouchers which Mr. Whittlesey therein supposed to have been destroyed by fire in December, 1836, have since been found, upon making a systematic arrangement of the books and papers in my office, and are now before me. I may also observe that these vouchers are not, in my opinion, sufficient of themselves to prove the amount expended for the object alleged. They embrace the period between the 6th and the 22d of January, 1836, but they do not show, nor is there any other evidence, that the charges were wholly for carrying mails which had accumulated at either end of the route; many of the charges are simply for carrying mails for short distances, keeping horses, drivers, &c. The bill of Thomas Cornwall contains items prior to the 7th of January, which Mr. Cumming does not charge, of a similar character to those after that day, which he does charge. The reason of the distinction between the two does not appear; these omissions may be mere defects of proof which may be supplied, and I think ought to be supplied, before any allowance should be made upon them. At present the question is a matter of principle independent of any proof of extra service. The language of the contract is that the contractor "is to carry the mail of the United States." It is without limitation or qualification, and necessarily includes the whole mail, of whatever description, which may, at the time of departure, be in the post office for transmission. Instances of double mails to be forwarded, in consequence of the failure of a mail in a connecting line from floods, storms, or

accidents, have been of constant occurrence in the department, without furnishing ground for additional compensation to the contractor. The accumulation in Mr. Cumming's case may have been greater than usual, but the excess does not affect or vary the principle.

If Mr. Cumming was bound to carry the mail, which I consider that he was by the terms of the contract as well as the practice of the department, the unauthorized orders of Mr. Plitt or Mr. Page could not raise for him any additional ground for compensation.

I am therefore of opinion that, under the terms of the joint resolution, Mr. Cumming can take nothing on account of this claim, nor on account of the first mentioned claim, for continued service in December, 1836.

P. G. WASHINGTON, *Auditor.*

No. 11.

POST OFFICE DEPARTMENT,
Contract Office, February 12, 1857.

SIR: After examination it does not appear that any contract was ever executed by the railroad company for transporting the United States mail, on route No. 951—New York to Philadelphia—between the 1st of January, 1836, and 31st of December, 1839.

Very respectfully, your obedient servant,

WM. H. DUNDAS,
Second Assistant Postmaster General.

DANIEL RATCLIFF, Esq.,
Assistant Solicitor Court of Claims, Washington.

No. 12.

POST OFFICE DEPARTMENT,
Contract Office, January 27, 1857.

SIR: By a resolution of Congress of February 18, 1847, the auditor for this department was instructed to examine the claims of A. M. Cumming; and I find that this was done accordingly, and a decision made on the 30th September, 1848, adverse to the claimant.

The whole case was thus placed beyond the control of this department, and I have to suggest that whatever information you may desire concerning it must be applied for through the Secretary of the Treasury.

Very respectfully, your obedient servant,

E. S. CHILDS,
For the Second Assistant Postmaster General.

DANIEL RATCLIFF, Esq.,
Assistant Solicitor Court of Claims, Washington City.

COURT OF CLAIMS.—No. 1.

ALEXANDER M. CUMMING *vs.* THE UNITED STATES.

JUNE 24, 1856.

SIR: Please to take notice that the depositions of John V. D. Joline and Joseph Cunningham will be taken upon interrogatories (copies of which are herewith served upon you) before the clerk of the county of Mercer, at his office in Trenton, in said county, on the 22d day of July, 1856, at ten o'clock in the forenoon.

Yours, &c.,

ALEX. M. CUMMING,
Complainant.

M. BLAIR, Esq., *United States Solicitor,*
Washington, D. C.

Interrogatories to be administered to Joseph Cunningham, of Trenton, New Jersey, a witness produced by complainant.

1st question. What is your name, age, and occupation, and where do you reside?

2d. Are you acquainted with complainant, and if so, how long and where have you known him?

3d. Were you in 1836, or at any other and what time, acquainted with mail routes Nos. 951 and 952, from Philadelphia to New York?

4th. By what contractor and in what manner were the United States mails transported on those routes from January, 1836, to July, 1840, inclusive?

5th. How many teams of horses, coaches, and wagons were employed in the transportation of the mail on those routes, respectively, during the time aforesaid?

6th. What was the cost and value of the teams, coaches, and harnesses employed on those routes by complainant, if any were employed by him?

7th. Was the mail carried over said lines or routes, or either of them, by night or day, or both, and were there any other night or Sunday lines than those run by complainant on the routes above mentioned?

8th. After such teams, horses, harnesses, carriages, and wagons had been purchased and put on said routes, under an expectation of having them employed thereon for four years, would the contractor suffer any and what loss upon said property by having an end put to his contract?

9th. What was the average number of passengers which passed daily over those routes and each way; and what was the price and value of transporting said passengers?

10th. What was the value of the daily, weekly, and monthly income of these routes, respectively, to the contractor for the transportation of the mails and passengers?

11th. What was the daily, weekly, and monthly expense to the contractor for the transportation of the mails and passengers on said routes?

12th. What was the daily, weekly, and monthly profits of the contractor for carrying the mails on the routes above mentioned during the years 1836 and 1837, upon the supposition that the contract price for carrying said mails was \$9,990 *per annum* on route No. 952 and \$13,125 on route No. 951?

13th. Was the stage property thrown out of employ in the winter of 1836-'37 less valuable than at any other season of the year, and if so, state the reasons why it was less valuable?

14th. How long was the contractor engaged in organizing and perfecting his lines of stages on the routes aforesaid before they were broken up?

15th. Were the arrangements of the contractors on these routes equal to the service required for four years from January 1, 1836.

16th. Do you know or have you heard any other matter or thing relative to the claims of the complainant against the United States for damages in consequence of the annulling of his contracts by the Postmaster General, for carrying the United States mail on routes No. 951 and 952, or for extra services performed or expenses incurred by him on these routes, or either of them, which will tend to the benefit or advantage of the complainant, and if so, state the same, as if particularly interrogated thereto?

J. D. WOODWARD,
Attorney for complainant.

COURT OF CLAIMS.

ALEXANDER M. CUMMING *vs.* THE UNITED STATES.

Interrogatories to be administered to John Van Dyke Joline, of Princeton, New Jersey, a witness produced by claimant.

1st question. What is your name, age, and occupation, and where do you reside?

2d. Are you acquainted with complainant, and if so, how long and where have you known him?

3d. Were you in 1836, or at any other time and what time, acquainted with mail routes No. 951 and 952, from Philadelphia to New York?

4th. By what contractor and in what manner were the United States mails transported on those routes from January, 1836, to July, 1840, inclusive?

5th. How many teams of horses, coaches, and wagons were employed in the transportation of the mail on these routes, respectively, during the time aforesaid?

6th. What was the cost and value of the teams, coaches, and harnesses employed on these routes by complainant, if any were employed by him?

7th. Was the mail carried over said lines or routes, or either of them, by night or day, or both, and were there any other night or Sunday lines than those run by complainant on the routes above mentioned?

8th. After such teams, horses, harnesses, carriages, and wagons had been purchased and put on said routes, under an expectation of having them employed thereon for four years, would the contractor suffer any and what loss upon said property by having an end put to said contract?

9th. What was the average number of passengers which passed daily over these routes each way, and what was the price and value of transporting said passengers?

10th. What was the value of the daily, weekly, and monthly income of those routes, respectively, to the contractor for the transportation of the mail and passengers?

11th. What was the daily, weekly, and monthly expense to the contractor for the transportation of the mails and passengers on said routes?

12th. What was the daily, weekly, and monthly profits of the contractor for carrying the mails on the routes above mentioned, during the years 1836 and 1837, upon the supposition that the contract price for carrying said mails was \$13,125 on route No. 951 and \$9,990 on route No. 952 per annum.

13th. Was stage property thrown out of employ in the winter of 1836-'37 less valuable than at any other season of the year, and if so, state the reasons why it was less valuable?

14th. How long was the contractor engaged in organizing and perfecting his lines of stages on the routes aforesaid before they were broken up.

15th. Were the arrangements of the contractor on those routes equal to the service required for four years from January 1, 1836?

16th. Do you know or have you heard any other matter or thing relative to the complainant's claims against the United States for damages in consequence of the annulling of his contract by the Postmaster General, for carrying the United States mails on routes No. 951 and No. 952, or for extra services performed or expenses incurred by him on those routes, or either of them, which will tend to the benefit or advantage of the complainant, and if so, state the same, as if particularly interrogated thereto?

J. D. WOODWARD,
Attorney for complainant.

Endorsement by the United States Solicitor in the Court of Claims:
"I have no interrogatories.

"M. BLAIR, *United States Solicitor.*"

OFFICE OF CHIEF CLERK OF COURT OF CLAIMS,
Washington, August 7, 1856.

I hereby certify that the foregoing are true copies of the original notice and interrogatories filed in this office in the case of Alex. M. Cumming *vs.* The United States; and that the same were duly served on the Solicitor of the United States within the proper time required by the rules of the Court, and that the copy of the Solicitor's entry thereon is also true.

In testimony whereof I have hereunto set my hand and affixed the [SEAL.] seal of the said Court, at Washington, on the day and year last above written.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

STATE OF NEW JERSEY, ss.

I, William R. Murphy, clerk of the circuit court of the county of Mercer, in said State, and commissioner of the United States under the act of Congress entitled "An act to establish a court for the investigation of claims against the United States," do solemnly promise and swear that I will faithfully perform the duties of such commission, according to the best of my abilities and understanding, so help me God.

WM. R. MURPHY.

Sworn and subscribed before me, at Trenton, this 21st day of July, A. D. 1856.

WM. C. HOWARD,
Justice of the Peace.

Deposition of John Van Dyke Joline to the interrogatories hereto annexed.

Question 1. What is your name, age, and occupation, and where do you reside?

Answer. John Van Dyke Joline; forty-nine years; farmer; and reside near Princeton, New Jersey.

Question 2. Are you acquainted with complainant, and if so, how long and where have you known him?

Answer. I am acquainted with complainant; have known him for thirty-three years, at Newark, New Jersey, and at Princeton.

Question 3. Were you, in 1836, or at any other and what time, acquainted with mail routes No. 951 and 952, from Philadelphia to New York?

Answer. I was in 1836, 1837 and 1838, acquainted with mail routes No. 951 and 952.

Question 4. By what contractor and in what manner were the United States mails transported on those routes from January, 1836, to July, 1840, inclusive?

Answer. The contractor on those routes was Alexander M. Cumming; in four-horse coaches from Philadelphia to New Brunswick, New Jersey, and from thence to New York by railroad, until the route 951 was put upon the railroad in January, 1837; I mean the Camden railroad.

Question 5. How many teams of horses, coaches, and wagons were employed in the transportation of the mail on those routes respectively, during the time aforesaid?

Answer. Eight four-horse teams and four coaches on each route, making sixteen teams and eight coaches; by extra wagons.

Question 6. What was the cost and value of the teams, coaches, and harness employed on those routes by complainant, if any were employed by him?

Answer. The value of the aforesaid horses, harness, and coaches was twelve thousand seven hundred dollars.

Question 7. Was the mail carried over said lines or routes or either of them by night or day, or both, or were there any other night or Sunday lines than those run by complainant on the routes above mentioned?

Answer. Over one route the mail was run by day and over the other by night; there were no other lines run either by night or on Sunday.

Question 8. After such teams, horses, harness, carriages, and wagons had been purchased and put on said routes under an expectation of having them employed thereon for four years, would the contractor suffer any and what loss upon said property by having an end put to this contract?

Answer. He would suffer a loss of about three thousand dollars for each route; that is, the property would be depreciated to that amount.

Question 9. What was the average number of passengers which passed daily over those routes each way, and what was the price and value of transporting said passengers?

Answer. The average number of passengers on each route each way daily was six, making twenty-four daily, at the price and value of four dollars each.

Question 10. What was the value of the daily, weekly, and monthly income of those routes, respectively, to the contractor, for the transportation of the mails and passengers?

Answer. The value to the contractor for transporting the mails and passengers daily was sixty dollars on each route, four hundred and twenty dollars weekly, and eighteen hundred dollars monthly; that is, for each route.

Question 11. What was the daily, weekly, and monthly expense to the contractor for the transportation of the mails and passengers on said routes?

Answer. The daily, weekly, and monthly expense for transporting

the mails and passengers on said routes was about thirty dollars daily, two hundred and ten dollars weekly, and nine hundred dollars monthly on each route.

Question 12. What was the daily, weekly, and monthly profits of the contractor for carrying the mails on the routes above mentioned during the years 1836 and 1837, upon the supposition that the contract paid for carrying said mails was \$9,990 per annum on route No. 952, and \$13,125 on route No. 951?

Answer. The profits to the contractor for carrying the mails over both routes would be about sixty-eight dollars daily, four hundred and seventy-seven dollars weekly, and two thousand and fifty-nine dollars monthly.

Question 13. Was the stage property thrown out of employ in the winter of 1836-7 less valuable than at any other season of the year? and if so, state the reasons why it was less valuable.

Answer. It was less valuable because grain and fodder are much higher, and no employment and duller sale for such property than other seasons of the year.

Question 14. How long was the contractor engaged in organizing and perfecting his lines of stages on the routes aforesaid before they were broken up?

Answer. One year.

Question 15. Were the arrangements of the contractor on those routes equal to the service required for four years from January 1, 1836?

Answer. They were.

Question 16. Do you know or have you heard any other matter or thing relative to the claims of the complainant against the United States for damages in consequence of the annulling of his contract by the Postmaster General for carrying the United States mails on routes Nos. 951 and 952, or for extra services performed or expenses incurred by him on those routes, or either of them, which will tend to the benefit or advantage of the complainant? and if so, state the same as if particularly interrogated thereto.

Answer. I know that the complainant carried the mails for some four or five weeks after I understood that the Postmaster General had annulled his contract; I know also that, on account of an unusually severe storm of snow in the winter of 1836, a very large amount of mail matter accumulated, which in ordinary times could have been carried by the regular stages; the complainant was obliged to hire horses and sleighs in addition to his own for the transportation of such mail matter. This accumulation occurred at New York and at Philadelphia in consequence of the non-arrival at those points of the mails north and south, and I have heard that the complainant was directed to incur this extra expense by the postmaster at Philadelphia and George Plitt, a special agent of the Post Office Department. I have no interest, direct or indirect, in the claim which is the subject of inquiry, and I am in no degree related to the complainant.

J. V. D. JOLINE.

STATE OF NEW JERSEY, *Mercer County*, ss.

On this 21st day of August, A. D. 1856, personally came John Van Dyke Joline, the witness within named, and after having been first sworn to tell the truth, the whole truth and nothing but the truth, the questions contained in the within deposition were written down by the commissioner, and then proposed by him to the witness; and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner.

The deposition of John Van Dyke Joline, taken at the request of Alexander M. Cumming; to be used in the investigation of a claim against the United States, now pending in the Court of Claims in the name of Alexander M. Cumming.

The adverse party was notified, did not attend, and did not object.
WM. R. MURPHY,
Commissioner.

Deposition of Joseph Cunningham to interrogatories hereto annexed:

1st question. What is your name, age and occupation, and where do you reside?

Answer. My name is Joseph Cunningham; I am fifty-six years old; I am a hotel-keeper; I reside in the city of Trenton.

2d question. Are you acquainted with complainant, and if so, how long and where have you known him?

Answer. I am acquainted with complainant, and have known him twenty years at Princeton and Trenton.

3d question. Were you in 1836, or at any other and what time acquainted with mail routes Nos. 951 and 952 from Philadelphia to New York?

Answer. I was acquainted in 1836 with mail routes Nos. 951 and 952 from Philadelphia to New York.

4th question. By what contractor and in what manner were the United States mails transported on those routes from January, 1836, to July, 1840, inclusive?

Answer. The contractor was Alexander M. Cumming, and the mails were transported in four horse coaches from Philadelphia to New Brunswick, and from thence to New York by railroad.

5th question. How many teams of horses, coaches and wagons were employed in the transportation of the mail on those routes, respectively, during the time aforesaid?

Answer. Eight teams, two coaches and two wagons to each line, making sixteen teams, four coaches and four wagons for the two routes, besides extra wagons on both routes in case of accident.

6th question. What was the cost and value of the teams, coaches and harness employed on those routes by complainant, if any were employed by him?

Answer. The cost and value of the teams, coaches and harness employed by complainant was from twelve to thirteen thousand dollars.

7th question. Was the mail carried over said lines or routes, or either of them by night or day, or both, and were there any other night or Sunday lines than those run by complainant on the routes above mentioned?

Answer. The mails were carried over the routes both by day and night, and there were no other lines either by night or Sunday than those run by complainant.

8th question. After such teams, horses, harness, carriages and wagons had been purchased and put on said routes under an expectation of having them employed thereon for four years, would the contractor suffer any, and what loss on said property by having an end put to his contract?

Answer. I should say he would lose three thousand dollars for each line.

9th question. What was the average number of passengers which passed daily over those routes, and each? and what was the price and value of transporting said passengers?

Answer. The average number of passengers on each line each way daily was six, and the price of each was four dollars.

10th question. What was the value of the daily, weekly, and monthly income of those routes, respectively, to the contractor for the transportation of the mails and passengers?

Answer. The value to the contractor for transporting the mails and passengers on each route, sixty-dollars daily, four hundred and twenty dollars weekly, and eighteen hundred dollars monthly.

11th question. What was the daily, weekly, and monthly expense to the contractor for the transportation of the mails and passengers on said routes?

Answer. The daily, weekly, and monthly expense to the contractor for transporting the mails and passengers on each of said routes was about thirty dollars daily, two hundred and ten dollars weekly, and nine hundred dollars monthly.

12th question. What were the daily, weekly, and monthly profits to the contractor for carrying the mails on the routes above mentioned during the years 1836 and 1837, upon the supposition that the contract paid for carrying said mails was \$9,990 per annum on route No. 952, and \$13,125 on route No. 951?

Answer. The profits to the contractor for carrying the mails over both routes would be about sixty-eight dollars daily, four hundred and seventy-seven dollars weekly, and two thousand and fifty-nine dollars monthly.

13th question. Was the stage property thrown out of employ in the winter of 1836-'37 less valuable than at any other season of the year, and, if so, state the reasons why it was less valuable?

Answer. It was less valuable on account of the increased cost of grain and hay, and the want of employment, and the dullness of sale for such property in the winter.

14th question. How long was the contractor engaged in organizing

and perfecting his lines of stages on the routes aforesaid before they were broken up?

Answer. Not less than one year.

15th question. Were the arrangements of the contractor on those routes equal to the service required for four years from January 1, 1836?

Answer. They were entirely so.

16th question. Do you know, or have you heard, any other matter or thing relative to the complainant's claims against the United States for damages in consequence of the annulling of his contract by the Postmaster General for carrying the United States mails on routes No. 951 and No. 952, or for extra services performed or expenses incurred by him on those routes, or either of them, which will tend to the benefit or advantage of the complainant, and, if so, state the same as if particularly interrogated thereto?

Answer. At that time I was postmaster at Trenton. I recollect, from conversations with the complainant and from his correspondence with the Post Office Department, that his pay for route No. 951 was stopped three weeks before the schedule for the new service was received, which was three weeks before January 1, 1837, and he continued the service up to that time. I know also that he was at great additional expense for transporting the mails during a very violent snow storm in the winter of 1836, which expense he was advised to incur by Mr. Plitt, an agent of the department, who assured the contractor in my presence that such extra expenses would be paid by the department. I also advised the contractor to the same course, because the mail matter had so accumulated as to render it necessary. I have no interest, direct or indirect in the claim which is the subject of inquiry, and am in no degree related to the complainant.

JOSEPH CUNNINGHAM.

STATE OF NEW JERSEY, }
Mercer County, } ss.

On this twenty-first day of August, A. D. 1856, personally came Joseph Cunningham, the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner, and then proposed by him to the witness, and the answers thereto were written down by the commissioner in the presence of the witness, who subscribed the deposition in the presence of the commissioner. The deposition of Joseph Cunningham, taken at the request of Alexander M. Cumming, to be used in the investigation of a claim against the United States, now pending in the Court of Claims in the name of Alexander M. Cumming. The adverse party was notified, did not attend, and not object.

WM. R. MURPHY, *Commissioner.*

No. 2.

STATE OF PENNSYLVANIA, }
 County of Philadelphia, } ss.

On this 30th day of September, A. D. 1856, personally came George Plitt, the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner and then proposed by him to the witness; and the answers thereto were written down by the commissioner, in the presence of the witness, who then subscribed the deposition in the presence of the commissioner.

The deposition of George Ritt, taken at the request of A. M. Cumming, to be used in the investigation of a claim against the United States, now pending in the Court of Claims in the name of Alexander M. Cumming.

The adverse party was notified and did not attend.

JAMES R. LUDLOW, *Commissioner*.

Fees of witness, \$1 50; commissioner's fees, \$10; postage, 9 cents.

GEORGE PLITT, being duly sworn according to law to tell the truth, the whole truth, and nothing but the truth, relative to the cause of Alexander M. Cumming *vs.* The United States, deposes and says as follows :

1st. What is your name, age, and occupation, and where do you reside ?

Answer. My name is George Plitt, aged fifty-four. I am clerk of the circuit court of the United States for the eastern district of Pennsylvania, and I reside in the city of Philadelphia.

2d. Are you acquainted with complainant, and, if so, how long and where have you known him ?

Answer. I am acquainted with complainant. I have known him from 1833 or 1834 to the present time ; first knew him in Baltimore as agent for Stockton & Stokes, mail contractors ; and afterwards in Princeton, his present residence, as mail contractor between Philadelphia and New York.

3d. Were you in 1836 or any other time, and at what time, agent for the General Post Office Department for forwarding the United States mails between the cities of New York and Philadelphia ?

Answer. I was then the general agent of the Post Office Department, having the general superintendence of post offices and mails throughout the Union.

4th. Were you in 1836 or at any other time, and at what time, acquainted with mail routes Nos. 951 and 952 from Philadelphia to New York ?

Answer. Yes, sir.

5th. By what contractor and in what manner were the mails transported over these routes from January, 1836, to July, 1840, inclusive?

Answer. I think that Mr. Cumming was the contractor for these two routes during that time; he certainly carried the mail in the winter of 1835 and 1836. The books of the department will tell who the contractor was.

6th. Was the winter of 1835 and 1836 mild, or extraordinary for its severity?

Answer. It was a very severe winter, indeed.

7th. Was there in January, 1836, an unusual snow storm; and if so, what was the effect of said storm upon the roads and transportation of the mails?

Answer. It was a very heavy snow storm indeed, and so severe that it was impossible to transport the mails in the railroad cars, and that, in consequence, the contractor was obliged to buy stock and sleds and coaches, and whatever was necessary to transport the mails with rapidity, and that I, as the agent of the department, encouraged him to do this, and assuring him that the department would liberally remunerate him for his extraordinary exertions and the necessary increased expenses.

8th. In consequence of the state of the roads at the time, were the United States mails delayed in the time of their arrival at New York and Philadelphia; and if so, how long were they delayed?

Answer. They were considerably delayed, two and three days' mails, back mails, arriving at the same time; all of which were, of course, carried over the route to and from New York by Colonel Cumming, the contractor, to the exclusion of all passengers.

9th. Was there, in consequence of an unprecedented storm of snow, an unusually large collection or accumulation of mails at Philadelphia and New York, or at either of those places, in January, 1836, or at any other or what time?

Answer. There was an unusually large accumulation of the mails at both points in January, 1836.

10th. Did you as agent of the Postmaster General, give any and what directions to A. M. Cumming to have the aforesaid mails forwarded by extra trains or carriages; and if so, what were these directions, and to whom and where were they given?

Answer. They were given both verbally and by letter from the Philadelphia post office to Colonel Cumming. In a letter addressed to Colonel Cumming on the 25th of December, 1841, while I was yet the agent of the Post Office Department, and when the whole of the circumstances were still fresh upon my recollection—a copy of which letter was annexed to the interrogatories in the hands of the commissioner, and which is marked J.R.L. No. 1—will be found a full and true statement as I then believed and do still believe, of the whole facts of the case, and which letter I desire to make a part of my testimony.

11th. Were any and what promises of remuneration made by you to the contractor for the extra services in sending forward said mails;

and were his teams sufficient and ample for the transportation of his regular mails on the routes above mentioned?

Answer. I have answered the first part of the question in my answer to the 10th interrogatory; his teams were sufficient and ample for the transportation of the regular mails on the routes above mentioned; that is my impression.

12th. Did you frequently pass over the routes above mentioned when the sleighs of A. M. Cumming were loaded solely with mails?

Answer. I did.

13th. Was there a misunderstanding between Mr. Kendall, Postmaster General and the Jersey Railroad Company, and did such company refuse to carry the mails thus accumulated on their railroad at any price?

Answer. I think there was such a misunderstanding at the time, and that the company, according to my impression, refused to carry the mails.

14th. Did you as agent of the Post Office Department direct the said A. M. Cumming to spare no expense to get the mails through, and state to him that the department would certainly compensate him for his extraordinary expenses and services?

Answer. I did.

15th. Was the Postmaster General made acquainted with your course in forwarding said mails, and did he approve or disapprove of your conduct and directions in relation thereto?

Answer. He was made acquainted at the time with all I did in the matter, and my strong impression is that my whole course met with his warm and cordial approval.

16th. Was the extra service performed with fidelity by Colonel A. M. Cumming, and if so, at what expense?

Answer. The extra service was performed with fidelity by Colonel Cumming, but I have no means of knowing at what expense.

17th. What was the value of the extra expenses incurred by A. M. Cumming, in sending forward the large accumulation of mails to which reference has already been made?

Answer. I have no means of knowing; I know he added largely to his stock at the time, and that he must have added greatly to his expenses.

18th. Did you on December 25, 1841, address a letter in regard to said extra services to Colonel A. M. Cumming, and if so is the paper herewith presented to you a copy of such letter?

Answer. I did, and the letter hereunto annexed and before referred to by me, I believe to be a true copy.

19th. When did the new arrangement so called, for carrying the mails on routes 951 and 952 commence?

Answer. I do not now remember when the arrangement commenced, but the books of the department will show.

20th. Were said mails carried by Colonel Cumming until January 1, 1837, on the routes above mentioned, and was the service performed with the approbation of yourself and the postmaster at Philadelphia?

Answer. Yes; my impression is that they were, and with the ap-

probation of Colonel Page, the postmaster at Philadelphia, and myself.

21st. Did Colonel Cumming transport the United States mails on the routes above mentioned for above period?

Answer. I believe he did, as he was the contractor.

22d. What was the contract price for the transportation of said mails on said routes from December 3, to December 31, 1836; and was such a reasonable compensation for said service?

Answer. I cannot answer this question; the books of the department will show that.

23d. Do you know any other matter or thing touching the matters in question that may tend to the benefit or advantage of the complainant; if yea, declare fully, and at large, as if you had been particularly interrogated thereto?

Answer. I know of nothing but that which I have already stated, except that Colonel Cumming should have been paid long ago.

GEORGE PLITT.

Sworn and subscribed before me this thirteenth day of September, A. D. 1856.

JAMES R. LUDLOW,
Commissioner.

COURT OF CLAIMS.

ALEXANDER M. CUMMING *vs.* THE UNITED STATES.

JUNE 24, 1856.

SIR: Please to take notice that the deposition of George Plitt will be taken upon interrogatories (a copy of which is herewith served upon you) before and by James R. Ludlow, esq., United States commissioner, at his office in Philadelphia, No. 30 South Fifth street, on the 23d day of July, 1856, at ten o'clock in the forenoon.

Yours, &c.,

ALEXANDER M. CUMMING,
Complainant.

M. BLAIR, Esq., *U. S. Commissioner, Washington, D. C.*

J. R. L. No. 1.

NEW YORK, December 25, 1841.

MY DEAR SIR: Your letter of yesterday's date, calling my attention to the extra service performed by you as mail contractor on the route from Philadelphia to New York during the extraordinary winter of 1835-'36, has this moment been received. I can only state to you what I have heretofore stated to the department at the time, and repeatedly since, that you had a just claim for important and extra services rendered to the department during the unparalleled snow storm of January, 1836; and I had supposed that it had long since been

allowed to you. I remember well that in consequence of the state of the roads at the time no mails arrived at either Philadelphia or New York from the south or east for two or three days at a time, and then double and triple mails would come together. To get these on without delay I directed you to hire extra conveyances and teams to run between the two cities while the difficulty lasted, and that you would be remunerated by the department for this extra service. I know, too, that I frequently passed over the road upon your sleighs which were loaded solely with the mails, and in repeated letters to Mr. Kendall, the Postmaster General, I recommended your zeal, activity, and extraordinary exertions to have the entire mails carried through. Mr. Kendall was highly gratified with the proof you gave of your desire to serve the department, and the more so because the Jersey Railroad Company had had a misunderstanding or difficulty with him and they refused positively to carry the mails thus enumerated upon any terms. Both Colonel Page and myself called upon the company urging them for the sake of the great good they would confer upon the people of Philadelphia and New York to at least carry a part of the mails, but without success. It was in this dilemma that I wrote to you to spare no expense in order to get the whole mail through, and that the department would certainly compensate you. Mr. Kendall approved of my course in the premises. That you performed the extra service with fidelity and at great expense to yourself is well known to Colonel Page, then postmaster of Philadelphia, and myself. And the newspapers of the day in both cities had frequent commendatory notices of your exertions, as well as of the officers of the department.

You are at liberty to use this letter if you think it will assist you in obtaining your claim.

I am, respectfully, your obedient servant,

GEORGE PLITT,
Agent Post Office Department.

A. M. CUMMING, Esq.,
Princeton, New Jersey.

COURT OF CLAIMS.

ALEXANDER M. CUMMING *vs.* THE UNITED STATES.

Interrogatories to be administered to George Plitt, esq., of Philadelphia, Pennsylvania, as witness produced by complainant:

1st. What is your name, age, and occupation, and where do you reside?

2d. Are you acquainted with complainant; and if so, how long and where have you known him?

3d. Were you in 1836, or any other time, and what time, agent of the General Post Office Department for forwarding the United States mails between the cities of New York and Philadelphia?

4th. Were you in 1836, or at any other time, and what time, acquainted with mail routes Nos. 951 and 952 from Philadelphia to New York?

5th. By what contractor and in what manner were the mails transported over those routes from January, 1836, to July, 1840, inclusive?

6th. Was the winter of 1835 and '36 mild, or extraordinary for its severity?

7th. Was there in January, 1836, an unusual snow storm, and if so, what was the effect of said storm upon the roads and transportation of the mails?

8th. In consequence of the state of the roads at the time, were the United States mails delayed in the time of their arrival at New York and Philadelphia, and if so, how long were they delayed?

9th. Were there, in consequence of an unprecedented storm of snow, an unusually large collection or accumulation of mails at Philadelphia and New York, or at either of those places in January, 1836, or at any other or what time?

10th. Did you as agent of the Postmaster General, give any and what directions to Colonel Cumming to have the aforesaid mails forwarded by extra trains or carriages, and if so, what were these directions, and to whom and when were they given?

11th. Were any and what promises of remuneration made by you to the contractor for the extra services in sending forward said mails, and were his trains sufficient and ample for the transportation of his regular mails on the routes above mentioned?

12th. Did you frequently pass over the routes above mentioned when the sleighs of Colonel Cumming were loaded solely with mails?

13th. Was there a misunderstanding between Mr. Kendall, Postmaster General, and the Jersey Railroad Company, and did such company refuse to carry the mails thus accumulated on their railroad at any price?

14th. Did you as agent of the Post Office Department, direct the said A. M. Cumming to spare no expense to get the mails through, and state to him that the department would certainly compensate him for his extraordinary expense and services?

15th. Was the Postmaster General made acquainted with your course in forwarding said mails, and did he approve or disapprove of your conduct and directions in relation thereto?

16th. Was the extra service performed with fidelity by Colonel A. M. Cumming, and if so, at what expense?

17th. What was the value of the extra expenses incurred by A. M. Cumming in sending forward the large accumulation of mails to which reference has already been made?

18th. Did you on December 25, 1841, address a letter in regard to said extra services to Colonel A. M. Cumming, and if so, is the paper herewith presented to you a copy of such letter?

19th. When did the new arrangement, so called, for carrying the mails on routes 951 and 952 commence?

20th. Were said mails carried by Colonel Cumming until January 1, 1837, on the routes above mentioned, and was the service per-

formed with the approbation of yourself and the postmaster at Philadelphia?

21st. Did Colonel Cumming transport the United States mails on the routes above mentioned for above period?

22d. What was the contract price for the transportation of said mails on said routes from December 3, to December 31, 1836, and was such a reasonable compensation for said service?

23d. Do you know any other matter or thing touching the matters in question that may tend to the benefit or advantage of the complainant; if yea, declare fully and at large as if you had been particularly interrogated thereto?

J. D. WOODWARD,
Attorney for plaintiff.

[Endorsement by the United States Solicitor.]

"I have no interrogatories.

"M. BLAIR, *Solicitor United States.*"

OFFICE OF CHIEF CLERK COURT OF CLAIMS,
Washington, August 7, 1856.

I hereby certify that the foregoing are true copies of the original notice, interrogatories, and exhibit thereto prefixed, filed in this office in the case of Alexander M. Cumming *vs.* The United States; and that the same were duly served on the Solicitor of the United States, within the proper time required by the rules of the Court, and that the copy of the Solicitor's endorsement thereon is also true.

In testimony whereof I have hereunto set my hand and affixed the [L. S.] seal of said Court at Washington, on the day and year last above written.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

No. 3.

COURT OF CLAIMS.

ALEXANDER CUMMING *vs.* THE UNITED STATES.

JUNE 24, 1856.

SIR: Please to take notice that the deposition of Peter R. Stelle will be taken upon interrogatories (a copy of which is herewith served upon you) before Aaron Ogden, esq., as commissioner, at his office in the city of New York, No. 52 Trinity Buildings, Broadway, on the 25th day of July, 1856, at 10 o'clock in the forenoon.

Yours, &c.,

ALEX. M. CUMMING,
Complainant.

M. BLAIR,
United States Solicitor, Washington, D. C.

COURT OF CLAIMS.

ALEXANDER M. CUMMING *vs.* THE UNITED STATES.

Interrogatories to be administered to Peter R. Stelle, of the city of New York, a witness produced by complainant :

1st question. What is your name, age, and occupation, and where do you reside?

2d. Are you acquainted with complainant, and if so, how long and where have you known him?

3d. Were you in 1836, and at any other time, and what time, acquainted with mail routes No. 951 and 952, from Philadelphia to New York?

4th. By what contractor and in what manner were the United States mails transported on those routes from January, 1836, to July, 1840, inclusive?

5th. How many teams of horses, coaches, and wagons were employed in the transportation of the mail on the routes, respectively, during the term aforesaid?

6th. What was the cost and value of the teams, coaches, and harnesses employed on those routes by complainant, if any were employed by him?

7th. Was the mail carried on said lines or routes, or either of them, by night or day, or both, and were there any other night or Sunday lines than those run by complainant on the route above mentioned?

8th. After such teams, horses, harness, carriages, wagons, &c., has been purchased and put on said routes under an expectation of having them employed thereon for four years, would the contractor suffer any and what loss upon said property by having an end put to his contract?

9th. What was the average number of passengers which passed daily over these routes each way, and what was the price and value of transporting said passengers?

10th. What was the value of the daily, weekly, and monthly income of these routes, respectively, to the contractor for the transportation of the mail and passengers?

11th. What was the daily, weekly, and monthly expense to the contractor for the transportation of the mails and passengers on such routes?

12th. What was the daily, weekly, and monthly profits of the contractor for carrying the mails on the routes above mentioned during the years 1836 and 1837, upon the supposition that the contract price for carrying said mails was \$13,125 on route No. 951, and \$9,990 on route No. 952, per annum?

13th. Was stage property thrown out of employ in the winter of 1836-'37 less valuable than any other season of the year, and if so, state the reasons why it was less valuable?

14th. How long was the contractor engaged in organizing and per-

fecting his lines of stages on the routes aforesaid before they were broken up?

15th. Were the arrangements of the contractor on those routes equal to the service required for four years from January 1, 1836?

16th. Do you know or have you heard any other matter or thing relative to the claims of the complainant against the United States for damages in consequence of the annulling of his contract by the Postmaster General for carrying the United States mails on route No. 951 and 952, or for extra services performed or expenses incurred by him on those routes, or either of them, which will tend to the benefit or advantage of the complainant, and if so, state the same as if particularly interrogated thereto?

J. D. WOODWARD,
Attorney for complainant.

[Endorsement by Hon. M. Blair, Solicitor United States in the Court of Claims.]

“I have no interrogatories.

“M. BLAIR, *Solicitor.*”

OFFICE OF CHIEF CLERK COURT OF CLAIMS,
Washington, August 7, 1856.

I hereby certify that the foregoing are true copies of the original notice and interrogatories filed in my office in the above mentioned case, and that the same were duly served on the solicitor of the United States within the proper time required by the rules of the Court, and that the copy of the solicitor's entry thereon is also true.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at Washington, on the day and year last above written.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

COURT OF CLAIMS.

ALEXANDER M. CUMMING *vs.* THE UNITED STATES.

On this twenty-eighth day of August, in the year of our Lord one thousand eight hundred and fifty-six, at my office, number one hundred and eleven Broadway, in the city of New York, before me, Aaron Ogden, a commissioner for the State of New York, appointed to take testimony to be used in the said Court of Claims, personally appeared Peter R. Stelle, the witness named in the annexed commission, and the said Peter R. Stelle, after having been by me first duly sworn to tell the truth, the whole truth, and nothing but the truth, doth depose and testify as follows:

First question. What is your name, age, and occupation, and where do you reside?

To the first question he says: My name is Peter R. Stelle. I am forty-nine years of age. I am a hotel-keeper. I reside in the city of New York. I have resided in the city of New York the last twelve years. I have no interest, direct or indirect, in the claim which is the subject of inquiry. I am in no way related to Alexander M. Cumming, the claimant.

Second question. Are you acquainted with the complainant, and if so, how long and where have you known him?

To the second question he says: I have been acquainted with Mr. Cumming more than twenty years. I have been acquainted with Mr. Cumming twenty-two years. I knew him in New Jersey.

Third question. Were you in 1836 and at any other time and what time, acquainted with mail routes No. 951 and 952, from Philadelphia to New York?

To the third question he says: I was acquainted with those routes from 1836 to 1839. I was Mr. Cumming's agent during that time.

Fourth question. By what contractor and in what manner were the United States mails transported on those routes from January, 1836, to July, 1840, inclusive?

To the fourth question he says: They were transported by Alexander M. Cumming, as contractor, in four-horse coaches and four-horse wagons during that time, from Philadelphia to New Brunswick, and in cars from New Brunswick to New York.

Fifth question. How many teams of horses, coaches, and wagons were employed in the transportation of the mail on the routes respectively during the term aforesaid?

To the fifth question he says: On line No. 951, eight teams, two coaches, and two wagons; on line No. 952, eight teams, two coaches, and two wagons. In addition to the above, there were always kept four additional extra teams for the two lines, and four extra coaches or wagons.

Sixth question. What was the cost and value of the teams, coaches, and harnesses employed on these routes by complainant, if any were employed by him?

To the sixth question he says: The cost and value of the whole stock of teams, coaches, and harnesses employed by complainant on these routes was between twelve and thirteen thousand dollars.

Seventh question. Was the mail carried on said lines or routes, or either of them, by night or day or both; and were there any other night or Sunday lines than those run by complainant on the routes above mentioned?

To the seventh question he says: There was one day line and one night line. There was no other Sunday or night line than those run by complainant on the routes.

Eighth question. After such teams, horses, harnesses, carriages, wagons, &c., had been purchased and put on said routes under an expectation of having them employed thereon for four years, would the contractor suffer any and what loss upon said property, by having an end put to his contract?

To the eighth question he says: I should think, in such a case, the

contractor would suffer a loss of about four thousand dollars on each of the two lines.

Ninth question. What was the average number of passengers which passed daily over these routes each day, and what was the price and value of transporting said passengers?

To the ninth question he says: I should think the average number which passed each way daily over each line was six. The price of transporting passengers from New York to Philadelphia was four dollars.

Tenth question. What was the value of the daily, weekly, and monthly income of these routes respectively to the contractor, for the transportation of the mail and passengers?

To the tenth question he says: The daily income was about one hundred and twenty dollars; the monthly income, about three thousand six hundred. The weekly income was about eight hundred and forty dollars.

Eleventh question. What was the daily, weekly, and monthly expense to the contractor for the transportation of mails and passengers on such routes?

To the eleventh question he says: I should think the daily expense on each line was thirty-five dollars; the weekly expense two hundred and forty-five dollars; the monthly expense one thousand and fifty dollars for each line.

Twelfth question. What was the daily, weekly, and monthly profits of the contractor for carrying the mails on the routes above mentioned, during the years 1836 and 1837, upon the supposition that the contract price for carrying said mails was \$13,125 on route No. 951, and \$9,990 on route No. 952, per annum?

To the twelfth question he says: Upon such a supposition the daily profits would be sixty-five dollars; the weekly profits four hundred and fifty-five, and the monthly profits nineteen hundred and fifty dollars on Nos. 951 and 952, for mails and passengers; I mean by the above both mail pay and passenger money.

Thirteenth question. Was stage property thrown out of employ in the winter of 1836-'37, less valuable than any other season of the year? If so, state the reasons why it was less valuable?

To the thirteenth question he says: It was less valuable. It was more expensive keeping the horses in winter than any other season of the year, and there was no employment for such property.

Fourteenth question. How long was the contractor engaged in organizing and perfecting his lines of stages on the routes aforesaid, before they were broken up?

To the fourteenth question he says: He was so engaged one year.

Fifteenth question. Were the arrangements of the contractor on those routes equal to the service required for four years, from January 1, 1856?

To the fifteenth question he says: They were fully so.

Sixteenth question. Do you know, or have you heard any other matter or thing relative to the claims of the complainant against the United States for damages, in consequence of the annulling of his

contract by the Postmaster General, for carrying the United States mails on route Nos. 951 and 952, or for extra services performed, or expenses incurred by him on those routes, or either of them, which will tend to the benefit or advantage of the complainant? And if so state the same as if particularly interrogated thereto?

To the sixteenth question he says: I recollect from conversations with Mr. Cumming, and from his correspondence with the department that his pay for carrying the mail on No. 951 was stopped some three weeks before the schedule for the new service was received, while he carried the mail up to the 1st of January, 1837. I know also that he was at great expense in carrying extra mails during and after a violent snow storm in 1836, which he was advised to do by the officers of the department, and which was necessary to get the whole mail through during the prevalence of the storm.

PETER R. STELLE.

The above examination was taken and reduced to writing, and by the witness subscribed and sworn to this twenty-eighth day of August, eighteen hundred and fifty-six, before me,

AARON OGDEN,
Commissioner.

COURT OF CLAIMS.

Commissioner's return.

ALEXANDER M. CUMMING *vs.* THE UNITED STATES.

STATE OF NEW YORK, *County of New York, ss.*

On this twenty-eighth day of August, A. D. 1856, personally came Peter R. Stelle, the witness within named, and, after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the written deposition were written down by the commissioner, and then proposed by him to the witness; and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner.

The deposition of Peter R. Stelle, taken at the request of Alexander M. Cumming, to be used in the investigation of a claim against the United States, now pending in the Court of Claims in the name of Alexander M. Cumming. The adverse party was notified, did not attend, and did not object.

AARON OGDEN,
Commissioner.

No. 4.

COURT OF CLAIMS.

*Particulars of petitioner's claim.*ALEXANDER M. CUMMING *vs.* THE UNITED STATES.

I.

The United States to Alexander M. Cumming, DR.

1836. For carrying the United States mail *on route* No. 951, from New York to Philadelphia in post coaches, from December 7, 1836, to January 1, 1837, 24 days, at the contract price \$2,625 per quarter, by order of the Postmaster General... \$700 09
Interest on the above services rendered under act of June 3, 1784, from January 1, 1837, to time of payment at 6 per cent.

II.

1836. For furnishing extra teams and transporting a large amount of mail matter which had accumulated during a great snow storm on said route, including his extraordinary expenses, by order of the Postmaster General or his agent..... 827 71
For interest on the above from February 1, 1836, to time of payment at 6 per cent.

III.

1837. For the maximum pay for services in transporting Jan. 1, the United States mail on route No. 952, from January 1, 1837, to July 1, 1840, $3\frac{1}{2}$ years, at \$9,990 per annum, deducting therefrom the amount received, \$8,991, balance due being 10 per cent., retained by the Postmaster General..... 3,496 50
Interest on the above from each quarter day after January 1, 1837, as it accrued to the time of payment at 6 per cent.

IV.

For losses and damages in consequence of the violation by the Postmaster General of a contract awarded to petitioner for carrying the United States mail on route No. 951, from New York to Philadelphia, from January 1, 1837, to July 7, 1838, 18 months and 7 days, as shown by three witnesses. Average of their estimate of net profits, as appears from answers to interrogatory No. 12, \$233 per week, 79 weeks..... 18,407 00

For like damages sustained by contractor from July 7, 1838, to January 1, 1840, when his mail contract ended; 77 weeks, 3 days, at \$233 per week	\$18,040 85
The contract pay after deducting 20 per cent. on route No. 951, was \$10,500 per annum, for three years, \$31,500.	
For depreciation of contractor's property on route No. 951, in consequence of the annulling of his contract by the Postmaster General. See answers of Messrs. Joline, Cunningham, and Stelle, to interrogatory No. 8.....	3,000 00
Deduct one month's extra pay, which petitioner received December, 1836, \$875.	

COURT OF CLAIMS.

*Brief.*ALEXANDER M. CUMMING *vs.* THE UNITED STATES.

I. From the evidence in the case it appears that the petitioner was a contractor for carrying the United States mails on route No. 951 and 952, between New York and Philadelphia, by virtue of two contracts dated October 27, 1835. His bids were \$13,125 for route No. 951, and \$9,990 for route No. 952, with 20 per cent. off on No. 951 in case No. 952 should be awarded to him, and 10 per cent. from the sum contained in that for No. 952, should he obtain the contract for No. 951. Both contracts were awarded to him. These contracts were to commence on the 1st day of January, 1836, and to continue in force four years from that time. They contain the usual printed clause, authorizing the Postmaster General to terminate them on forwarding six months' notice of his intention so to do. They also contain a written clause to the effect that, "That in case any arrangement shall hereafter be made under the authority of Congress, to carry the mails for the whole or any part of the route on railroads, then this contract shall be annulled." The letter of acceptance of the petitioner's proposals, addressed to him by the Postmaster General, and which forms a part of the contract, is as follows:

POST OFFICE DEPARTMENT, NORTHERN DIVISION,

December 3, 1835.

SIR: The Postmaster General has accepted your proposal for transporting the mail on route No. 951, at \$13,125, with a deduction

of 20 per cent.; and on condition that in case any arrangement shall hereafter be made under the authority of Congress, to carry the mail for the whole or any part of the route on railroad, then your contract to be annulled, or there shall be a pro rata reduction, as the case may be. And he has also accepted your proposal for route No. 952, at \$9,990 per annum, with a deduction of 10 per cent., and under the same conditions as No. 951; to be run by Princeton, Brunswick, Newark, &c. Contracts and bonds will be forwarded for your execution.

S. R. HOBBIE,

First Assistant Postmaster General.

ALEXANDER M. CUMMING,

Newark, New Jersey.

Under these contracts the petitioner transported the mails on the routes designated, and was entitled to the price agreed upon for the service required. On the 6th of December, 1836, a letter was addressed by Mr. Dyer, for the Postmaster General, to the petitioner, informing him that his contract for No. 951 was annulled, an agreement having been made with the Camden and Amboy railroad to transport the great mail between New York and Philadelphia, and an arrangement made with petitioner for an improvement on No. 952, to supply certain offices that depended on No. 951. The pay on that route was stopped December 7, 1836, but the schedule for the new arrangement bears date December 27, 1836, and was not received by petitioner until the 30th of said month, up to which time he continued to transport the mail; and the postmasters of Newark and New Brunswick state that they received two mails a day from Philadelphia until the 1st of January, 1837, and after that one mail a day.

On the 14th of November, 1836, the Assistant Postmaster General, in a postscript to a letter to petitioner, says: "Continue to carry the mails on route No. 951 and No. 952 until otherwise ordered.

S. R. H."

From a letter of Colonel Page, postmaster of Philadelphia, and the register of the arrivals and departures of the mails kept at the post office in Philadelphia, now in the office of the Auditor for the Post Office Department, it appears that the mails were regularly delivered to and carried by the petitioner, on said route, until 31st December, 1836. The letter of C. Dyer was not an order to discontinue the service, nor was it so considered by the contractor or postmasters; and even if the Postmaster General intended to have discontinued the route, such order was not transmitted to the postmasters of New York and Philadelphia, nor were any new schedules furnished to them or the contractor (the only orders by which the contractor and postmasters are governed) until the time mentioned, but the postmasters continued to place the mails in charge of the contractor, and requested him to carry them until the schedule was

received. Had the petitioner discontinued the service on route No. 951 on 7th of December, 1836, (the new schedules on No. 952 not having been made,) the whole line would have been deranged, and the service have suffered. The new schedule, *i. e.* the new order, was received by the postmasters and contractor on the 30th of December, and he stopped on the next day, being the end of the month, quarter, and year. This new schedule changed route No. 951 over to the Camden and Amboy railroad, and also changed the hour of No. 952 from 6 a. m. to 9 p. m., commencing on the 1st of January, 1837. The omission of the Postmaster General to furnish the new schedules justified the contractor in carrying the mail until the end of the year; and the fact that he did perform the service at the request of the postmasters, and under the order of the Assistant Postmaster General, "To continue carrying the mail until otherwise ordered," shows that even if the Postmaster General had the right to, and did put an end to the original contract, his directions above referred to, operated as a new, or enlargement of the old contract, until the schedules were furnished. Besides, a register of the delivery of the mails to the petitioner was daily forwarded to the department, from which it may be inferred that the Postmaster General had knowledge of and gave his assent to the service.

For this service, performed for the United States by the petitioner in good faith, he is fairly entitled to a reasonable compensation, which may be considered the price agreed upon by the parties in the original contract. If the Postmaster General could control or dispense with the service by allowing one month's extra pay, it does not follow that if the service was continued he could employ another person to perform it.

The petitioner is also entitled to interest on the 24 days' service from January 1, 1837, under the act of June 3, 1784, which provides: "That an interest of 6 per cent. per annum shall be paid to all the creditors of the United States for supplies furnished, or services done from the time that payment became due.

II. The petitioner, at the time of the great fall of snow in 1836 which blocked up the roads, and stopped the mails in all the Middle States, performed a large amount of labor, at a heavy expense, in *clearing the snow, and opening the roads, which were impassable*, and furnishing extra teams, and transporting a large amount of mail matter, which had accumulated south of Philadelphia and east of New York, which extra labor was performed at the request of Mr. Page, Postmaster at Philadelphia, and by the express direction of George Plitt, special agent of the Post Office Department, under strong assurances that petitioner should be remunerated for his extraordinary services and expenses. In the performance of this extra labor the petitioner expended several hundred dollars, for which proper vouchers were furnished the Post Office Department, but which vouchers were supposed to have been destroyed by the burning of the Post Office building in 1836, in consequence of which, Postmaster General Niles decided that petitioner's claim could not be allowed, for want of suffi-

cient vouchers. The petitioner afterwards procured duplicate vouchers for nearly the whole claim, one or two small items excepted, which in consequence of death or removal of the parties could not be obtained. When these duplicate vouchers were brought to the Post Office Department, in place of those supposed lost by the fire but which were afterwards found, a new Postmaster General was then in office, who objected to opening and examining the case, because he had adopted a rule prohibiting a case once decided from being re-opened without authority of Congress. The action of the officers of the Treasury Department in regard to charges Nos. 1 and 2, does not affect the law of the case, nor the rights of the parties. Devereaux's Reports, pages 80 and 81, No. 296, 298. This extraordinary service, rendered necessary by the act of God, was not provided for in the contract, nor its necessity foreseen. Interest upon the item in question is due to the petitioner, under the act of June 3, 1784 before cited, and upon every principle of justice. These charges were presented to Congress, and allowed by the committee to whom the subject was referred, (see Senate Report No. 28, 2d Session 28th Congress) but the joint resolution, passed in pursuance of said report, proved valueless to the petitioner inasmuch as the accounting officers declined to act or make any allowance under it.

The following is a copy :

Joint Resolution authorizing and directing the examination and settlement of the claims of Alexander M. Cumming. *Resolved* by the Senate and House of Representatives of the United States of America in Congress assembled, That the Auditor of the Treasury for the Post Office Department be directed to examine and audit the claims of Alexander M. Cumming of New Jersey, late mail contractor, on routes nine hundred and fifty-one and nine hundred and fifty-two, between the cities of Philadelphia and New York, between the years eighteen hundred and thirty-five, and eighteen hundred and thirty-nine, and it shall be the duty of the Postmaster General to pay him the balance [if any] that may be justly and legally due him under the contracts and orders from the department and its agents out of the current appropriation for mail transportation. January 30, 1846. H. R. 1st Session 29th Cong.

Although this resolution would justify an allowance of petitioner's claims, yet the construction placed upon the contract, acts and orders of the P. M. General by the Auditor in his department has rendered the resolution of no practical value.

III. The claims for the maximum pay for services in transporting the U. S. Mail, on route No. 952, is predicated on the proposals of petitioner, their acceptance, and the contracts which followed. The fair interpretation of the whole is that the deduction of ten per cent was not to be made, unless the petitioner had the benefit and advantages of both routes for the whole period. When the Postmaster General discontinued No. 951, the petitioner's right to maximum pay remained, and he was entitled to the ten per cent under the contract, or by way of damages for the violation of the other by the Postmaster

General. The petitioner states his own and other bids for routes No. 951 and 952 Philadelphia and New York, as follows :

	No 951.		No. 952.
A. M. Cumming,	\$13,125	A. M. Cumming,	\$9,990
Morris Buckman,	17,000	M. Buckman	7,000
Camden & Amboy R. R.	26,000	C. & A. Railroad,	12,000
Phila. & Trenton R. R.	24,000	Phil. & Trenton R. R.	9,000

That his contract was four years with the privilege of the Department to continue it for 6 months longer, so as to make the year commence in July instead of January, which was done, and he run that mail four and a half years or until July 1840. That the Government saved \$13,500 per annum for three and a half years, or \$47,250 by violating the contract, and effecting his ruin.

IV. The claims for losses and damages sustained by the petitioner in consequence of a violation of the contract for carrying the United States mail from New York to Philadelphia, rests upon a plain and common sense interpretation of the agreement between the parties, which was that petitioner should carry the mails on the route indicated, and be entitled for such service to the price stipulated, for four years "unless Congress should sooner determine to have the mails carried on railroads." The language used by the Postmaster General in his letter accepting the bids, and the written portion of the printed contract, show clearly that such was the "meaning and intention" of the parties. Acting under this belief the petitioner made the necessary investment of capital for a faithful performance of the contract on his part. From the depositions of Messrs. Joline, Cunningham and Stelle in answers to the 5th and 6th interrogatories it appears that 8 four-horse teams, 2 coaches and 2 wagons were placed on each route, making for both lines 16 teams, 4 coaches and 4 wagons, besides extra wagons at a cost of \$12,466. The petitioner also insists that the Postmaster General had no right to put an end to the contract until Congress should authorise the mail to be carried on railroads, and until service of the stipulated notice. The petitioner is therefore not only entitled to his pay for the time he actually carried the mail, but for the whole period covered by his contract, or the damages which he sustained by the action of the Postmaster General in this regard. The act of July 7, 1838 conferred authority on the Postmaster General to put an end to the contract, but he never acted under it, and the case may be considered precisely as if no such authority existed; petitioner's profits were \$10,000 per annum, which were entirely destroyed by the taking away of his line which carried the passengers: see deposition of Joline, Cunningham and Stelle, witnesses of high character going to corroborate the above statement, and prove the heavy losses which the petitioner has sustained. If it be urged that sections 12 and 13 of the printed contract gave the Postmaster General a right to terminate the contract when he did, on route No. 951, it may be answered, that those sections being repugnant to and inconsistent with his agreement that "he would not" terminate the contract until an arrangement should

be made for carrying the mails on railroads under the authority of Congress, operated as a repeal of these sections, or justified the petitioner in considering it an independent covenant for the violation of which the United States are liable to respond in damages. The second section of the act "to establish certain post routes and to discontinue others," passed July 7, 1838, (eighteen months after the action of the Postmaster General) provides "That each and every railroad within the limits of the United States, which now is or hereafter may be made and completed shall be a post route, and the Postmaster General shall cause the mail to be transported thereon, provided he can have it done upon reasonable terms, and not paying therefor in any instance more than twenty-five per centum over and above what similar transportation would cost in post coaches," approved July—, 1838.—(See Post Office Laws and Regulations, page 50, or Statutes at Large.) Under this act the Postmaster General was authorized to annul the contract, but no action was taken by him after its passage, and the petitioner is therefore not only entitled to the damages which he sustained previous to its passage, but for the whole time covered by his contract. It is recorded in the Digest of Justinian "That he who has hired his services to another is to receive his reward for the whole time, if it has not been his fault that the services have not been performed." It was not the fault of petitioner that the stipulated service was not performed, for he made every arrangement for carrying his agreement into effect, and continued the service until the contract was taken from him and turned over to R. F. Stockton, or the Camden and Amboy Railroad Company, which was long before railroads were established by law as post routes. The records of the Post Office Department contain the following:

"R. F. Stockton proposes to carry the mail on route No. 951, at the price it is now carried, say \$10,500. It is considered the interest of the department to accept the proposition. A. K."

R. F. Stockton agrees to carry the express mail and great mail consolidation in railroad cars, &c., for the lowest bid for an express mail, viz: \$14,000 added to the present cost of the great mail, \$10,500, conforming to the hours required by the department, and to carry into contract a bid for the second mail between New York and Philadelphia accepted at the last letting, at \$3,000, giving two daily mails between the two cities by railroad. It is deemed the interest of the department to carry this proposal into contract.

SEPTEMBER 16, 1836.

A. K.

It is apparent from the foregoing, that while the interests of the department were promoted by annulling the contract for route No. 951, the rights of the petitioner were entirely disregarded, and his pecuniary ruin effected. His claims Nos. 1, 2 and 3, having been rejected by the Postmaster General, it is not surprising that petitioner's claim for damages which he sustained by the depreciation of his property and loss of his passengers, was not by him urged when he had no means of enforcing his rights, and could only sue for them in the language of solicitation. The establishment of a Court of

Claims, an act so creditable to Congress and satisfactory to the people, has induced the petitioner to continue his efforts to obtain that relief which has hitherto been denied him, and to which he is most justly entitled.

Respectfully submitted,

J. D. WOODWARD,

Solicitor and Counsel for Petitioner.

FEBRUARY 25, 1857.

Argued and submitted, May 26, 1857.

Memorandum for reply to brief of United States Solicitor.

ALEXANDER M. CUMMING *vs.* The UNITED STATES.

I.

The decision of the Auditor of the Post Office Department (P. G. W.) on the 30th September 1848, on that part of petitioner's claim which was referred to that officer, is not conclusive, nor is it a bar to a recovery before this court, for there is nothing in the resolution of Congress which makes the decision of the Auditor or Comptroller conclusive. They should have carried out the intention of Congress as evinced by the reports of the committees, and were not justified in adopting a previous adverse decision. In the case of *Beaugrand vs. The United States*, Chief Justice Gilchrist says: "where the claimant upon petition makes out his case against the United States, the court grants relief notwithstanding a previous decision of the War Department that, the claimant could not receive the compensation sought under a resolution and act of Congress through the instrumentality of the Department on account of its existing regulations."

It is conceded by the solicitor that if the mails which accumulated at New York and Philadelphia had belonged to other routes than the one embraced by petitioner's contract, he might justly claim compensation for their transportation. Now, it will not be denied that a large part of the mail matter which petitioner transported belonged to other routes, and had accumulated in consequence of the storm. The necessity of this extraordinary service and expense of cutting out roads and forcing the United States mail through snow drifts was not foreseen, and the promise of payment on the part of Mr. Plitt, agent of the United States, ought to decide the question in favor of the petitioner.

See House report No. 169, first session Twenty-ninth Congress, and Resolution House of Representatives No. 12, same Congress.

II.

The claims for damages which the petitioner sustained in consequence of a violation of the contract by the Postmaster General were not submitted, nor have they been acted upon by the department

or by Congress. The solicitor says: "the claim for \$17,750 damages or any other amount of damage must depend upon the terms of the contract, and if it appear that the Post Office Department has not violated its terms, then the plaintiff has shown no legal ground to recover." We admit the correctness of this view, but show conclusively that the Postmaster General by his premature action has violated his contract, and subjected the petitioner to the heavy losses which he has sustained.

The petitioner is entitled to the actual value of his contract which was violated by the Postmaster General.—See case of *Masterdon vs. seventh Hill's Reports*, p. —, and opinion of Attorney General Cushing, volume 6, page 516; also the testimony of Messrs. Joline, Cunningham and Stelle.

No. 5.

IN THE COURT OF CLAIMS.

Solicitor's Brief.

ALEXANDER M. CUMMING *vs.* THE UNITED STATES.

The petitioner's claim rests on four distinct grounds, to wit:

1st. He claims for twenty-three days' continued service in the month of December, 1836, on route No. 951, at the contract price per quarter of \$2,625, making \$656 25.

2d. He claims extra compensation for transporting an accumulated amount of mail matter at Philadelphia and New York in the early part of January, 1836, in consequence of severe weather.

3d. He claims to have 10 per cent. added to his contract No. 952, because that amount was deducted from it in consideration that he was to receive contract No. 951, which was awarded to him, and afterwards annulled by the department before the time limited for its continuance.

4th. He claims \$15,750 damages on account of the annulment of contract No. 951.

The first three items of this claim were presented to the Post Office Department at different times for settlement, and disposed of adversely, which action we think proper and final, under the circumstances disclosed in the papers before the court. The claim of 10 per cent. was referred to Mr. Whittlesey, Auditor for the Post Office Department, and on the 6th day of December, 1841, he decided against it. (See his report, marked A, in which the facts are fully stated.) From the decision of the Auditor an appeal was taken to the First Comptroller, under the act of Congress of July 2, 1836, (5 S. L., page 81,) and said decision affirmed.—(See paper marked B.) By the 8th section of the said act of 1836, it is provided that there shall be appointed by the President, with the consent of the Senate, an Auditor of the Treasury for the Post Office Department, whose duty it shall be to

receive all accounts arising in the said departments, or relative thereto; to audit and settle the same, and certify their balances to the Postmaster General: provided, that if either the Postmaster General, or any person whose account shall be settled be dissatisfied therewith, he may, within twelve months, appeal to the First Comptroller of the Treasury, whose decision shall be final and conclusive. The two items for twenty-three days' continued service on route No. 951, and extra service in January, 1836, were also disposed of adversely by the Auditor, Mr. Whittlesey, on the 19th day of February, 1842. See papers C and D, in which the evidence connected with these demands is fully presented.

The petitioner being dissatisfied with the action thus had in his case, afterwards, to wit, on the 18th day of February, 1847, procured through Congress a joint resolution by which his said claims were referred to the Auditor of the Post Office Department, (Peter G. Washington,) and on the 30th day of September, 1848, he reported against them. See said report, marked E, in which will be found a copy of the resolution of Congress and also a full statement of the facts connected with the plaintiff's demand. From the character of said resolution, and the action had thereon, it seems to us that the petitioner is concluded, and that this court can afford no relief. See *Comegys and others vs. Vass*, 1 Peters, 212; also the decision of this court in the cases of *Letitia Humphreys vs. The United States*, *Thomas vs. The United States*, and *Roberts vs. The United States*. But assuming for the sake of argument that the case is not thus concluded, and that it is competent for this court to give relief, still we think the evidence shows no right in the plaintiff to recover. Proposals were invited by the Post Office Department to carry the mails on routes Nos. 951 and 952, being parallel routes from New York to Philadelphia, and the petitioner bid for them on the 15th of October, 1835, with a condition if he got both to take off 10 per cent. He did get both, and subsequently entered into written contracts to commence the service on the 1st of January, 1836. By the 13th section of these contracts it is provided that the Postmaster General may curtail the service, or dispense with it entirely, he allowing one month's extra pay upon the amount deducted. On the 6th day of December, 1836, the Post Office Department notified the petitioner of the annulment of his contract No. 951, and he was paid one month's extra pay. The claim for \$15,750 damages or any other amount of damage, must depend upon the terms of the contract; and if it appears that the Post Office Department has not violated those terms, then the plaintiff has shown no legal ground to recover. He may have sustained an injury by having his contract unexpectedly terminated, but that injury is not such as to give him a legal right to recover damages of the United States.

The claim for twenty-three days' continued service in the month of December, 1836, is a question of evidence, and the facts will be found fully collected in the report of Mr. Washington before referred to. The item or claim for extra labor, &c., in forwarding the mails from Philadelphia and New York in the early part of 1836, involves a

question of law. The regular through mails had accumulated at these points in consequence of snow and bad weather. They were the mails that belonged to the routes of the petitioner, and but for the bad weather, would have been carried regularly as they arrived, and no charge consequently made for them.

Had they belonged to other routes, and by the contingency referred to thrown upon the petitioner, then he might have justly claimed compensation for their transportation. If he was bound under his contract to carry said mails as they arrived, it was equally his duty to do so when they had accumulated, and no promise on the part of the Post Office agents, of extra compensation, could under the circumstances give the plaintiff a legal demand against the Government.

DANIEL RATCLIFFE,

Assistant Solicitor of the Court of Claims.

No. 6.

ALEXANDER M. CUMMING *vs.* THE UNITED STATES.

Judge Blackford delivered the opinion of the court.

On the 16th of December, 1835, the claimant contracted with the Postmaster General to carry the United States mail from New York to Philadelphia and back daily, in four-horse coaches and railroad cars on route numbered 951. This contract was on condition that, in case any arrangement should thereafter be made under the authority of Congress, to carry the mails for the whole or any part of the route on railroads, then this contract should be annulled, or there should be a *pro rata* deduction, as the case might be. The compensation for the service was to be \$10,500 per annum, payable quarterly. The contract also contains the following provision: "That the Postmaster General may curtail the service or dispense with it entirely, he allowing one month's extra pay upon the amount deducted, in case he wishes to place on the route a higher degree of service than is contracted for, first offering the privilege to the contractor on the route of furnishing such higher service on the terms that can be obtained: or whenever he shall deem it expedient to lessen the service, or to leave such route or any part of it out of operation, or to convey the mail by steamboat or railroad cars; provided that reduction of compensation in consequence of reduction of service shall not exceed the exact proportion which the service dispensed with bears to the whole service."

On the same day, namely, the 16th of December, 1835, that the above contract was executed, the claimant entered into another contract with the Postmaster General for carrying the mail from New York to Philadelphia and back daily in four-horse coaches and railroad cars, on route numbered 952. The compensation for this service was to be \$8,991 per annum, payable quarterly. This other contract contains a condition relative to the annulment of the contract, and a provision as to curtailing the service or dispensing with it, &c., simi-

lar to those we have described as being contained in the contract respecting route number 951.

Both said contracts were to commence on the 1st of January, 1836, and to continue in force until the 31st of December, 1839, unless, &c.

Soon after the claimant commenced the performance of these contracts, namely, in January, 1836, there came on a severe snow storm which for several days prevented the arrival of the mails at Philadelphia from the south, and at New York from the north. On the arrival of those mails, a great accumulation of the mails at those cities took place. In consequence of such accumulation and the snow, the claimant was put to considerable extra expense and trouble in forwarding those mails, for which he charges in his petition, the sum of \$827 71. He was requested by the agent of the Post Office Department to make every exertion to forward the mails thus accumulated, the agent assuring him that the extra expense would be paid by the department. This agent says in his deposition that what he did in the matter was approved of by the department.

We think there can be no doubt but that, in a legal point of view, there is no foundation for this claim.

The claimant in consideration of large sums of money, undertook to carry the mails from New York to Philadelphia, and from the latter to the former, at stated times. The contract makes no provision for additional compensation in case there should be any such accumulation of the mails as above referred to, and the claimant took upon himself the risk of such accumulation. The circumstance that said agent requested the forwarding of those mails by the contractor, and assured him that he would be paid for it extra, and that what the agent thus did was approved of by the department can make no difference. The claimant did no more than he was bound to do by his contract of the 16th of December, 1835, and the government is not liable to pay him more for his services than that contract provides for. The promise here relied on for extra pay was without consideration. The sailors who during a storm made extraordinary exertions to save the ship on the captain's promise of extra pay, were entitled only to their ordinary wages, because it was their duty to do all they could to save the ship. The true doctrine is, that the mere performance of an act which the party was by law bound to perform, is not a sufficient consideration for a promise of extra pay for such performance.—(1 Selwyn's *Nisi Prius*, 43.) In an able report from the office of the Auditor of the Post Office Department against this claim, it is said: "Instances of double mails to be forwarded in consequence of the failure of a mail in a connecting line, from floods, storms, or accidents, have been of constant occurrence in the department without furnishing ground for additional compensation to the contractor. The accumulation in Mr. Cumming's case may have been greater than usual, but the excess does not affect the principle."

The next claim is for carrying the mail on said route 951 for twenty-three days—that is, from the 7th of December, 1836, to the end of that month. The charge for this service is \$700. The material facts are believed to be as follows :

The claimant's contract for carrying the mail on route 951 contains a provision to which we have referred, authorizing the Postmaster General to annul the contract at any time on allowing one month's extra pay. That officer in November, 1836, made an arrangement with the Camden and Amboy Railroad Company for carrying the great mail between New York and Philadelphia (the same that was then carried on route 951 by the claimant) from and after the 15th of November, 1836. On the 14th of that month the department made a proposition to Mr. Cumming (which he accepted) for an improvement on route 952, rendered necessary by the transfer of the great mail, and offered him \$3,009 per annum for such improvement; and, in a postscript to the letter, it is said: "You will continue carrying mails on routes 951 and 952 until otherwise ordered." Afterwards, on the 6th of December, 1836, the department wrote to Mr. Cumming as follows:

"SIR: An arrangement having been made with the Camden and Amboy Railroad Company for the conveyance of the great mail between New York and Philadelphia, and you having accepted the offer of the department for an improvement on route No. 952, which will supply certain of the towns in New Jersey with the mail for which they depended on route No. 951, the Postmaster General has directed that your contract on route No. 951 be annulled, and that you be allowed one month's extra pay."

It appears that the change of schedule, to meet the new arrangement, is dated the 27th of December 1836.

There is the following statement by the Auditor of the Treasury of the Post Office Department:

"Upon the arrangement being made with the Camden and Amboy Railroad Company, the great burden of the mail was removed from Mr. Cumming, whether on route 951 or 952. All the through mail was of course carried upon it, and nothing was left for Mr. Cumming but the mail to and from the intermediate offices. It is a mistake, therefore, to suppose that Mr. Cummings continued *the service* on 951 after the 7th December, 1836; in fact, he had ceased to carry the great mail as well as a portion of the mail usually sent on 952, from the 15th November, although he continued to be paid for both precisely as if he had carried the two entire mails to the former day, with the addition of one month's extra pay, which, I think, the Postmaster General might well have withheld under the stipulation in contract 951 before recited, if he had thought proper so to do."

We are of opinion that, according to the above stated facts, there is no legal ground for this claim. The contract as to route 951, was legally annulled by the Postmaster General's order of the 6th of December, 1836, and from the time of notice of that annulment, the claimant had no authority to carry any mails on that route. He contends that the direction in the postscript to said letter of the department of the 14th of November, 1836, continued to be in force till the new schedule aforesaid was delivered. But that is impossible. No more positive direction to the claimant to cease carrying the mails on route 951 could have been given than the absolute annulment long

after said postscript was written, namely, on the 6th of December, 1836, of the whole contract in regard to that route. If the claimant carried any of the mails on said route 951 after notice of said annulment, (and we believe he did continue to carry some of them till the last of December, 1836,) they were carried without authority, and he can have no legal claim for doing so. Individuals cannot create debts in their favor against the government without its consent.

Both the above mentioned claims were presented to the Postmaster General and rejected by him on the merits. Afterwards, in 1847, Congress by a joint resolution referred the same claims for determination to the Auditor of the Treasury for the Post Office Department, who, in 1848, gave a written decision against them.

The third claim is for the ten per cent. which was deducted from the \$9,990 mentioned in one of the proposals of the claimant for carrying said mails, which proposals were substantially as follows: To carry the mail on route 951 daily for \$13,125 per annum, or, if the proposal for route 952 was accepted, then 20 per cent. to be deducted from the \$13,125; also, to carry the mail on route 952 daily for \$9,990 per annum, or, if the proposal for route 951 was accepted, then 10 per cent. to be deducted from said sum of \$9,990. The proposals were accepted, and the beforementioned contracts entered into accordingly.

The claimant contends that upon the annulment of the contract for route 951 he became entitled to the \$9,990 per annum for carrying the mail on route 952 instead of the \$8,991 which he received.

The answer to this claim is, that the claimant contracted to carry the mail on route 952 for \$8,991 per annum, and there is no provision that he should have, under any circumstances, anything more for that service. As to the annulment of the contract for route 951, that was authorized by the express terms of that contract on payment of one month's extra pay, which payment was made.

The fourth claim is for \$15,000 damages, alleged to have been sustained by the claimant in consequence of the said annulment of the contract for route 951. But we have already shown that that annulment was legal, it being authorized by the express terms of the contract.

We have now noticed all the claims presented by the petition, and are of opinion that the claimant has no cause of action.

